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PUBLIC HEARING
before
ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE
on
ASSEMBLY BILL NO. 1900

(An Act to amend the "Spill Compensation and Control Act")

Held:
September 21, 1982
Freeholders' Meeting Room
Elizabeth, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Raymond Lesniak (Chairman)

ALSO PRESENT:

Mark O. Smith, Research Associate
Office of Legislative Services
Aide, Assembly Agriculture and Environment Committee

New Jersey State Library

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ASSEMBLY, No. 1900

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 30, 1982

By Assemblyman LESNIAK

AN ACT to amend the "Spill Compensation and Control Act,"
approved January 6, 1977 (P. L. 1976, c. 141).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 3 of P. L. 1976, c. 141 (C. 58:10-23.11b) is amended to
2 read as follows:

3 3. Unless the context clearly indicates otherwise, the following
4 terms shall have the following meanings:

5 a. "Administrator" means the chief executive of the New
6 Jersey Spill Compensation Fund;

7 b. "Barrel" means 42 United States gallons or 159.09 liters or
8 an appropriate equivalent measure set by the director for hazard-
9 ous substances which are other than fluid or which are not com-
10 monly measured by the barrel;

11 c. "Board" means a board of arbitration convened by the
12 administrator to settle disputed disbursements from the fund;

13 d. "Cleanup and removal costs" means all costs associated with
14 a discharge incurred by the State or its political subdivisions or
15 their agents or any person with written approval from the depart-
16 ment in the (1) removal or attempted removal of hazardous sub-
17 stances or, (2) taking of reasonable measures to prevent or miti-
18 gate damages to the public health, safety, or welfare, including
19 but not limited to, public and private property, shorelines,
20 beaches, surface waters, water columns and bottom sediments,
21 soils and other affected property, including wildlife and other
22 natural resources;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.
Matter printed in italics *thus* is new matter.

23 e. "Commissioner" means the Commissioner of Environmental
24 Protection;

25 f. "Department" means the Department of Environmental
26 Protection;

27 g. "Director" means the Director of the Division of Taxation in
28 the Department of the Treasury;

29 h. "Discharge" means any intentional or unintentional action
30 or omission resulting in the releasing, spilling, leaking, pumping,
31 pouring, emitting, emptying or dumping of hazardous substance
32 into the waters of the State or onto lands from which it might
33 flow or drain into said waters, or into waters outside the juris-
34 diction of the State when damage may result to the lands, waters
35 or natural resources within the jurisdiction of the State;

36 i. ["Fair market value" means the invoice price of the hazard-
37 ous substances transferred including transportation charges; but
38 where no price is so fixed, "fair market value" shall mean the
39 market price as of the close of the nearest day to the transfer
40 paid for similar hazardous substances as shall be determined by
41 the taxpayer pursuant to rules of the director.] (Deleted by
42 amendment, P. L. . . . , c. . . .)

43 j. "Fund" means the New Jersey Spill Compensation Fund;

44 k. "Hazardous substances" means such elements and com-
45 pounds, including petroleum products, which are defined as such
46 by the department, after public hearing, and which shall be con-
47 sistent to the maximum extent possible with, and which shall
48 include, the list of hazardous substances adopted by the Federal
49 Environmental Protection Agency pursuant to Section 311 of the
50 Federal Water Pollution Control Act Amendments of 1972 as
51 amended by the Clean Water Act of 1977 (33 U.S.C. 1251 et seq.)
52 and the list of toxic pollutants designated by Congress or the
53 EPA pursuant to Section 307 of that act; provided, however that
54 sewage and sewage sludge shall not be considered as hazardous
55 substances for the purposes of this act;

56 l. "Major facility" includes but is not limited to any refinery,
57 storage or transfer terminal, pipeline, deep water port, drilling
58 platform or any appurtenance related to any of the preceding that
59 is used or is capable of being used to refine, produce, store, handle,
60 transfer, process or transport hazardous substances. A vessel shall
61 be considered a major facility only when hazardous substances are
62 transferred between vessels.

63 A facility shall not be considered a major facility for the
64 purpose of this act unless it has total combined above-ground or
65 buried storage capacity of--

66 (1) 50,000 gallons or more for hazardous substances which are
67 other than petroleum or petroleum products, or

68 (2) 400,000 gallons or more for hazardous substances of all
69 kinds.

70 For the purposes of this definition, "storage capacity" shall
71 mean only that capacity which is dedicated to, used for or intended
72 to be used for storage of hazardous substances. Where appro-
73 priate to the nature of the facility, storage capacity may be
74 determined by the intended or actual use of open land or un-
75 enclosed space as well as by the capacities of tanks or other
76 enclosed storage spaces.

77 m. "Natural resources" means all land, fish, shellfish, wildlife,
78 biota, air, waters and other such resources owned, managed, held
79 in trust or otherwise controlled by the State;

80 n. "Owner" or "operator" means with respect to a vessel,
81 any person owning, operating or chartering by demise such vessel;
82 with respect to any major facility, any person owning such facility,
83 or operating it by lease, contract or other form of agreement; with
84 respect to abandoned or derelict major facilities or *hazardous*
85 *waste disposal facilities*, the person who owned or operated such
86 facility immediately prior to such abandonment, or the owner at
87 the time of discharge;

88 o. "Person" means public or private corporations, companies,
89 associations, societies, firms, partnerships, joint stock companies,
90 individuals, the United States, the State of New Jersey and any
91 of its political subdivisions or agents;

92 p. "Petroleum" or "petroleum products" means oil or petro-
93 leum of any kind and in any form including, but not limited to,
94 oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse,
95 oil mixed with other wastes, crude oils, and substances or addi-
96 tives to be utilized in the refining or blending of crude petroleum
97 or petroleum stock in this State; however, any compound desig-
98 nated by specific chemical name to the list of hazardous substances
99 adopted by the department pursuant to subsection 3(k) shall not
100 be considered petroleum or a petroleum product for the purposes
101 of this act, unless such compound is to be utilized in the refining
102 or blending of crude petroleum or petroleum stock in this State;

103 q. "Taxpayer" means the owner or operator of a major facility
104 or a *hazardous waste disposal facility* subject to the tax provisions
105 of this act;

106 r. "Tax period" means every calendar month on the basis of
107 which the taxpayer is required to report under this act;

108-118 s. "Transfer" means onloading or offloading between major

119 facilities and vessels or vessels and major facilities, and from
 120 vessel to vessel or major facility to major facility, except for fuel-
 121 ing or refueling operations and except that with regard to the
 122 movement of hazardous substances other than petroleum, it shall
 123 also include any unloading of or offloading from a major facility;

124 t. "Vessel" means every description of water craft or other
 125 contrivance that is practically capable of being used as a means
 126 of commercial transportation of hazardous substances upon the
 127 water, whether or not self-propelled;

128 u. "Waters" means the ocean and its estuaries to the seaward
 129 limit of the State's jurisdiction, all springs, streams and bodies of
 130 surface or groundwater, whether natural or artificial, within the
 131 boundaries of this State;

132 v. "Act of God" means an act exclusively occasioned by an
 133 unanticipated grave natural disaster without the interference of
 134 any human agency;

135 w. "*Hazardous waste*" means any amount of any waste sub-
 136 stances required to be reported to the department on the special
 137 waste manifest pursuant to N. J. A. C. 7:26-7.4, or as otherwise
 138 provided by law, including waste generated outside of New Jersey,
 139 except those wastes disposed on-site at a New Jersey site owned
 140 and operated by the generator of those wastes.

141 x. "*Hazardous waste disposal facility*" means any area, plant
 142 or other facility for the treatment, storage or disposal of hazard-
 143 ous waste, including loading and transportation facilities or
 144 equipment used in connection with the processing of hazardous
 145 wastes, except that "*hazardous waste disposal facility*" shall not
 146 include any facility which reuses or recycles for further use any
 147 hazardous waste.

1 2. Section 7 of P. L. 1976, c. 141 (C. 58:10-23.11f) is amended
 2 to read as follows:

3 7. a. Whenever any hazardous substance is discharged, the
 4 department may, in its discretion act to remove or arrange for the
 5 removal of such discharge or may direct the discharger to remove,
 6 or arrange for the removal of, such discharge. If the discharge
 7 occurs at any hazardous or solid waste disposal facility, the de-
 8 partment may order the facility closed for the duration of the
 9 removal operations. The department may monitor the discharger's
 10 compliance with any such directive. Any discharger who fails to
 11 comply with such a directive shall be liable to the department in an
 12 amount equal to three times the cost of such removal, and shall be
 13 subject to the revocation or suspension of any license or permit
 14 he holds authorizing him to operate a hazardous or solid waste
 15 disposal facility.

16 Removal of hazardous substances and actions to minimize dam-
17 age from discharges shall, to the greatest extent possible, be in
18 accordance with the National Contingency Plan for removal of oil
19 and hazardous substances established pursuant to section 311 (c)
20 (2) of the Federal Water Pollution Control Act Amendments of
21 1972 (P. L. 92-500, 33 U. S. C. 1251 et seq.).

22 Whenever the department acts to remove a discharge or
23 contracts to secure prospective removal services, it is authorized
24 to draw upon the money available in the fund. Such moneys shall
25 be used to pay promptly for all cleanup costs incurred by the
26 department in removing or in minimizing damage caused by such
27 discharge.

28 Nothing in this section is intended to preclude removal and
29 cleanup operations by any person threatened by such discharges,
30 provided such persons coordinate and obtain approval for such
31 actions with ongoing State or federal operations. No action taken
32 by any person to contain or remove a discharge shall be construed
33 as an admission of liability for said discharge. No person who
34 renders assistance in continuing or removing a discharge shall be
35 liable for any civil damages to third parties resulting solely from
36 acts or omissions of such person in rendering such assistance
37 except for acts or omissions of gross negligence or willful mis-
38 conduct. In the course of cleanup operations, no person shall
39 discharge any detergent into the waters of this State without prior
40 authorization of the commissioner.

41 b. Notwithstanding any other provisions of P. L. 1976, c. 141
42 (C. 58:10-23.11 et seq.), the department, after notifying the ad-
43 ministrator and subject to the approval of the administrator with
44 regard to the availability of funds therefor, may remove or
45 arrange for the removal of any hazardous substance which:

46 (1) Has not been discharged from a grounded or disabled vessel
47 if the department determines that such removal is necessary to
48 prevent an imminent discharge of such hazardous substance;

49 (2) Has not been discharged if the department determines that
50 such substances is not satisfactorily stored or contained and said
51 substance possesses any one or more of the following charac-
52 teristics:

53 (a) explosiveness;

54 (b) high flammability;

55 (c) radioactivity;

56 (d) chemical properties which in combination with any dis-
57 charged hazardous substance at the same storage facility
58 would create a substantial risk of imminent damage to public

59 health or safety or an imminent and severe damage to the
60 environment;

61 (e) is stored in a container from which its discharge is
62 imminent as a result of contact with a hazardous substance
63 which has already been discharged and such additional dis-
64 charge would create a substantial risk of imminent damage
65 to public health or safety or imminent and severe damage to
66 the environment; or

67 (f) high toxicity and is stored or being transported in a
68 container or motor vehicle, truck, railcar or other mechanized
69 conveyance from which its discharge is imminent as a result
70 of the significant deterioration or the precarious location of
71 the container, motor vehicle, truck, railcar or other mecha-
72 nized conveyance, and such discharge would create a sub-
73 stantial risk of imminent damage to public health or safety
74 or imminent and severe damage to the environment; or

75 (3) Has been discharged prior to the effective date of P. L.
76 1976, c. 141, if such discharge poses a substantial risk of imminent
77 damage to the public health or safety or imminent and severe
78 damage to the environment.

79 c. If and to the extent that he determines that funds are
80 available, the administrator shall approve and make payments for
81 any cleanup and removal costs incurred by the department for the
82 removal of a hazardous substance other than petroleum as autho-
83 rized by subsection b. of this section; provided that in deter-
84 mining the availability of funds, the administrator shall not
85 include as available funds revenues realized or to be realized
86 from the tax on the transfer of petroleum to the extent that such
87 revenues result from a tax levied at a rate in excess of \$0.01
88 per barrel, pursuant to subsection 9b. of P. L. 1976, c. 141 (C.
89 58:10-23.11h), unless the administrator determines that the sum
90 of claims paid by the fund on behalf of petroleum discharges or
91 removals plus pending reasonable claims against the fund on
92 behalf of petroleum discharges or removals is greater than 30%
93 of the sum of all claims paid by the fund plus all pending, reason-
94 able claims against the fund.

95 d. The administrator may only approve and make payments for
96 any cleanup and removal costs incurred by the department for
97 the removal of a hazardous substance discharged prior to the
98 effective date of P. L. 1976, c. 141, pursuant to subsection b. of
99 this section, if, and to the extent that, he determines that adequate
100 funds from another source are not or will not be available; and
101 further provided, with regard to the cleanup and removal costs

102 incurred for discharges which occurred prior to the effective date
103 of P. L. 1976, c. 141, the administrator may not during any one
104 year period pay more than ~~[\$3,000,000.00]~~ \$15,000,000.00 in total
105 or more than ~~[\$1,500,000.00]~~ \$3,000,000.00 for any discharge or
106 related set or series of discharges.

107 e. Notwithstanding any other provisions of P. L. 1976, c. 141, the
108 administrator, upon the approval of the department after consid-
109 ering, among any other relevant factors, its priorities for spending
110 funds pursuant to P. L. 1976, c. 141, and within the limits of avail-
111 able funds, shall make payments for the restoration or replacement
112 of, or connection to an alternative water supply for, any private
113 residential well destroyed, contaminated, or impaired as a result
114 of a discharge prior to the effective date of P. L. 1976, c. 141, pro-
115 vided however total payments for said purpose shall not exceed
116 \$500,000.00 for the period between the effective date of this sub-
117 section and January 1, 1983, and in any calendar year thereafter.

118 f. Any expenditures made by the administrator pursuant to this
119 act shall constitute a first priority claim and lien paramount to all
120 other claims and liens upon the revenues and all real and personal
121 property of the discharger, whether or not the discharger is
122 insolvent.

1 3. Section 9 of P. L. 1976, c. 141 (C. 58:10-23.11h) is amended
2 to read as follows:

3 9. a. There is hereby levied ~~upon each owner or operator of~~
4 ~~one or more major facilities]~~ a tax upon the disposal of hazardous
5 waste, to be paid by the owner or operator of the hazardous waste
6 disposal facility, and a tax upon the transfer of hazardous sub-
7 stances to a major facility, to be paid by the transferee except as
8 otherwise specifically provided herein, to insure compensation for
9 cleanup costs and damages associated with any discharge of haz-
10 ardous substances ~~[to be paid by the transferee]~~ or hazardous
11 waste; provided, however, that in the case of a major facility which
12 operates as a public storage terminal for hazardous substances
13 owned by others, the owner of the hazardous substance transferred
14 to such major facility or his authorized agent shall be considered
15 to be the transferee or transferor, as the case may be, for the pur-
16 poses of this section and shall be deemed to be a taxpayer for pur-
17 poses of this act. Where such person has failed to file a return or
18 pay the tax imposed by this act within 60 days after the due date
19 thereof, the director shall forthwith tax appropriate steps to col-
20 lect same from the owner of the hazardous substance. In the event
21 the director is not successful in collecting said tax then on notice
22 to the owner or operator of the public storage terminal of said fact

23 said owner [of] or operator shall not release any hazardous sub-
24 stance owned by the taxpayer. The director may forthwith proceed
25 to satisfy any tax liability of the taxpayer by seizing, selling or
26 otherwise disposing of said hazardous substance to satisfy the tax-
27 payer's tax liability and to take any further steps permitted by
28 law for its collection. For the purposes of this act public storage
29 terminal shall mean a public or privately owned major facility
30 operated for public use which is used for the storage or transfer
31 of hazardous substances. The tax shall be measured by the number
32 of barrels [or the fair market value, as the case may be,] of haz-
33 ardous substances transferred to the major facility[.]; provided,
34 however, that the same barrel, including any products derived
35 therefrom, subject to multiple transfers from or between major
36 facilities shall be taxed only once at the point of the first transfer.
37 *The tax on the disposal of hazardous waste shall be measured by*
38 *the number of tons so disposed at a hazardous waste disposal*
39 *facility.*

40 When a hazardous substance other than petroleum which has not
41 been previously taxed is transferred from a major in-State facility
42 to a facility which is not a major facility, the transferor shall be
43 liable for tax payment for said transfer.

44 b. The tax shall be \$0.01 per barrel transferred and in the case
45 of the transfer of hazardous substances other than petroleum or
46 petroleum products, the tax shall be [the greater of \$0.01 per barrel
47 or 0.4% of the fair market value of the product] *at a rate estab-*
48 *lished by the director designed to raise \$2,500,000.00 annually and*
49 *in the case of the disposal of hazardous waste the tax shall be at*
50 *the rate of \$10.00 per ton, until the balance in the fund equals or*
51 *exceeds \$50,000,000.00[; provided, however, that with respect to*
52 *transfers of hazardous substances other than petroleum or petro-*
53 *leum products which are or contain any precious metals to be re-*
54 *cycled, refined, or rerefined in this State, or which are transferred*
55 *into this State subsequent to being recycled, refined or rerefined,*
56 *the tax shall be \$0.01 per barrel of the hazardous substance. For*
57 *the purposes of this section, "precious meals" means gold, silver,*
58 *osmium, platinum, palladium, iridium rhodium, ruthenium and*
59 *copper]. In each fiscal year following any year in which the balance*
60 *of the fund equals or exceeds \$50,000,000.00, no tax shall be levied*
61 *unless (1) the current balance in the fund is less than \$40,000,000.00*
62 *or (2) pending claims against the fund exceed 50% of the existing*
63 *balance of the fund. The provisions of the foregoing notwithstand-*
64 *ing, should claims paid from or pending against the fund not exceed*
65 *\$5,000,000.00 within three years after the tax is first levied, the tax*

66 shall be \$0.01 per barrel transferred [or 0.4% of the fair market
67 value of the product, as the case may be,] until the balance in the
68 fund equals or exceeds \$36,000,000.00, and thereafter shall not be
69 levied unless: (1) the current balance in the fund is less than
70 \$30,000,000.00 or (2) pending claims against the fund exceed 50%
71 of the existing balance of the fund. In the event of either such
72 occurrence and upon certification thereof by the State Treasurer,
73 the director shall within 10 days of the date of such certification
74 relevy the excise tax, which shall take effect on the first day of the
75 month following such relevy. [With respect to the tax imposed
76 upon the transfer of hazardous substances which are other than
77 petroleum or petroleum products, if the revenues from such tax
78 exceed \$7,000,000.00 during any calendar year, such excess shall be
79 refunded or credited to the taxpayers who paid such tax during the
80 calendar year. The refund or credit shall be based upon the amount
81 of taxes paid by each taxpayer on transfers of hazardous sub-
82 stances which are other than petroleum or petroleum products for
83 the calendar year in proportion to all taxes paid by all taxpayers
84 on such transfers during said year; provided, however, that if at
85 the end of the calendar year the increased tax rate as authorized
86 by this subsection or subsection i. is in effect, no refund or credit
87 shall be allowed for such calendar year; and further, provided that
88 no refund or credit shall be allowed for a calendar year if by reason
89 of such refund or credit a condition would occur which would au-
90 thorize the imposition of the tax at the higher rate authorized in
91 this subsection or subsection i. However, a partial refund or credit
92 shall be allowed to the extent that such a condition would not
93 occur.] In the event of a major discharge or series of discharges
94 resulting in *pending* reasonable claims against the fund exceeding
95 the existing balance of the fund, the tax shall be levied as follows:
96 (1) On petroleum or petroleum products, at the rate of \$0.04 per
97 barrel transferred, until the revenue produced by such increased
98 rate equals 150% of the total [dolar] *dollar* amount of all pending
99 reasonable claims resulting from the discharge of petroleum or
100 petroleum products; provided, however, that such rate may be set
101 at less than \$0.04 per barrel transferred if the administrator deter-
102 mines that the revenue produced by such lower rate will be suffi-
103 cient to pay outstanding reasonable claims against the fund within
104 one year of such levy; and
105 (2) On *hazardous waste, and on hazardous substances other*
106 *than petroleum or petroleum products, at [the] a rate of [the*
107 *greater of \$0.04 per barrel transferred or 0.08% of the fair*
108 *market value of such] \$40.00 per ton for hazardous waste disposed*

109 *and at a rate four times that rate established by the director as*
110 *hereinbefore provided for hazardous [substance] substances, until*
111 *the revenue produced by such increased rate equals 150% of the*
112 *total dollar amount of all pending reasonable claims resulting from*
113 *the discharge of hazardous substances other than petroleum or*
114 *petroleum products; provided, however, that [with respect to trans-*
115 *fers of hazardous substances other than petroleum or petroleum*
116 *products which are or contain any precious metals to be recycled,*
117 *refined, or rerefined in this State, or which are transferred into this*
118 *State subsequent to being recycled, refined, or rerefined, the tax*
119 *shall be \$0.04 per barrel of the hazardous substances; and provided*
120 *further, however, that] any such increased tax rate on hazardous*
121 *waste, and on hazardous substances other than petroleum or petro-*
122 *leum products may be set at less than [\$0.04 per barrel transferred,*
123 *or 0.08% of the fair market value of the hazardous substance, as*
124 *the case may be,] \$40.00 per ton of hazardous waste disposed and*
125 *less than that rate established by the director as hereinbefore pro-*
126 *vided if the administrator determines that the revenue produced*
127 *by such lower rate shall be sufficient to pay outstanding reasonable*
128 *claims against the fund within one year of such levy.*

129 Interest received on moneys in the fund shall be credited to the
130 fund. Should the fund exceed \$36,000,000.00 or \$50,000,000.00, as
131 herein provided, as a result of such interest, the administrator and
132 the commissioner shall report to the Legislature and the Governor
133 concerning the options for the use of such interest.

134 e. (1) Every taxpayer and owner or operator of a public storage
135 terminal for hazardous substances shall, on or before the twentieth
136 day of the month following the close of each tax period, render a
137 return under oath to the director on such forms as may be pre-
138 scribed by the director indicating the number of barrels of hazar-
139 dous substances transferred [and where appropriate, the fair
140 market value of the hazardous substances transferred] to or from
141 the major facility, and at said time the taxpayer shall pay the full
142 amount of the tax due.

143 (2) Every taxpayer or owner or operator of a major facility or
144 vessel which transfers a hazardous substance, as defined in this
145 act, and who is subject to the tax under subsection a. shall, within
146 20 days after the first such transfer in any fiscal year register with
147 the director on such form as shall be prescribed by him.

148 (3) *Every taxpayer and owner or operator of a hazardous waste*
149 *disposal facility shall, on or before the twentieth day of the month*
150 *following the close of each tax period, render a return under oath*
151 *to the director on such forms as shall be prescribed by the director*

152 *indicating the number of tons of hazardous waste disposed, and at*
153 *that time the taxpayer shall pay the full amount of the tax due.*

154 d. If a return required by this act is not filed, or if a return when
155 filed is incorrect or insufficient in the opinion of the director, the
156 amount of tax due shall be determined by the director from such
157 information as may be available. Notice of such determination
158 shall be given to the taxpayer liable for the payment of the tax.
159 Such determination shall finally and irrevocably fix the tax unless
160 the person against whom it is assessed, within 30 days after receiv-
161 ing notice of such determination, shall apply to the director for a
162 hearing, or unless the director on his own motion shall redetermine
163 the same. After such hearing the director shall give notice of his
164 determination to the person to whom the tax is assessed.

165 e. Any taxpayer who shall fail to file his return when due or to
166 pay any tax when the same becomes due, as herein provided, shall
167 be subject to such penalties and interest as provided in the "State
168 Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised
169 Statutes. If the Division of Taxation determines that the failure
170 to comply with any provision of this section was excusable under
171 the circumstances, it may remit such part or all of the penalty as
172 shall be appropriate under such circumstances.

173 f. (1) Any person failing to file a return, failing to pay the tax,
174 or filing or causing to be filed, or making or causing to be made,
175 or giving or causing to be given any return, certificate, affidavit,
176 representation, information, testimony or statement required or
177 authorized by this act, or rules or regulations adopted hereunder
178 which is wilfully false, or failing to keep any records required
179 by this act or rules and regulations adopted hereunder, shall, in
180 addition to any other penalties herein or elsewhere prescribed, be
181 guilty of a **[misdemeanor]** *crime of the fourth degree.*

182 (2) The certificate of the director to the effect that a tax has not
183 been paid, that a return has not been filed, that information has
184 not been supplied or that inaccurate information has been supplied
185 pursuant to the provisions of this act or rules or regulations
186 adopted hereunder shall be presumptive evidence thereof.

187 g. In addition to the other powers granted to the director in this
188 section, he is hereby authorized and empowered:

189 (1) To delegate to any officer or employee of his division such of
190 his powers and duties as he may deem necessary to carry out
191 efficiently the provisions of this section, and the person or persons
192 to whom such power has been delegated shall possess and may
193 exercise all of said powers and perform all of the duties delegated
194 by the director;

195 (2) To prescribe and distribute all necessary forms for the im-
196 plementation of this section.

197 h. The tax imposed by this act shall be governed in all respects
198 by the provisions of the "State Tax Uniform Procedure Law,"
199 Subtitle 9 of Title 54 of the Revised Statutes, except only to the
200 extent that a specific provision of this act may be in conflict there-
201 with.

202 i. Notwithstanding any other provisions of the section, the
203 Treasurer may order the director to levy the tax on all *hazardous*
204 *waste, and all hazardous substances other than petroleum or petro-*
205 *leum products at a specified rate greater than \$0.01 per barrel [or*
206 *0.04% of the fair market value of the product, as the case may be,*
207 *but in no event to exceed \$0.04 per barrel with respect to transfers*
208 *of hazardous substances other than petroleum or petroleum prod-*
209 *ucts which are or contain any precious metals to be recycled, re-*
210 *fined or rerefined in this State, or which are transferred into this*
211 *State subsequent to being recycled, refined or rerefined, or the*
212 *greater of \$0.04 per barrel or 0.06% of the fair market value of the*
213 *product with respect to transfers of any other hazardous sub-*
214 *stances other than petroleum or petroleum products, if and] as*
215 *long as the administrator determines the following:*

216 (1) That pending, reasonable claims against the fund for hazar-
217 dous substances other than petroleum or petroleum products exceed
218 70% of the existing balance of the fund, and

219 (2) That the sum of the claims paid by the fund on behalf of
220 discharges or removals of hazardous substances other than petro-
221 leum or petroleum products plus pending[.] reasonable claims
222 against the fund on behalf of discharges [or] of hazardous sub-
223 stances other than petroleum is equal to or greater than 70% of
224 all claims paid by the fund plus all pending[.] reasonable claims
225 against the fund.

226 The provisions of this subsection shall not preclude the impo-
227 sition of the tax at the higher rate authorized under subsection b.
228 of this section.

1 4. Section 16 of P. L. 1976, c. 141 (C. 58:10-23.11o) is amended
2 to read as follows:

3 16. Moneys in the New Jersey Spill Compensation Fund shall be
4 disbursed by the administrator for the following purposes and no
5 others:

6 (1) Costs incurred under section 7 of this act;

7 (2) Damages as defined in section 8 of this act;

8 (3) Such sums as may be necessary for research on the preven-
9 tion and the effects of spills of hazardous substances on the

10 **[marine]** environment and on the development of improved cleanup
 11 and removal operations as may be appropriated by the Legislature;
 12 provided, however, that such sums shall not exceed the amount of
 13 interest which is credited to the fund;

14 (4) Such sums as may be necessary for the boards, general ad-
 15 ministration of the fund, equipment and personnel costs of the
 16 department and any other State agency related to the enforcement
 17 of this act as may be appropriated by the Legislature;

18 (5) Such sums as may be appropriated by the Legislature for
 19 research and demonstration programs concerning the causes and
 20 abatement of ocean pollution; provided, however, that such sums
 21 shall not exceed the amount of interest which is credited to the fund.

22 The Treasurer may invest and reinvest any moneys in said fund
 23 in legal obligations of the United States, this State or any of its
 24 political subdivisions. Any income or interest derived from such
 25 investment shall be included in the fund.

26 (6) *Such sums as may be necessary, up to a limit of \$500,000.00*
 27 *per year, to continue department participation in interagency en-*
 28 *forcement activities of the federal and State governments concern-*
 29 *ing hazardous waste control.*

30 (7) *Such sums as may be requested by the commissioner, up to*
 31 *a limit of \$250,000.00 per year, to cover the costs associated with*
 32 *the administration of the "Environmental Cleanup Responsibility*
 33 *Act," P. L. 198 , c. (C.) (now pending before the Legis-*
 34 *lature as Assembly Bill No. 1231 of 1982).*

35 (8) *Such sums as may be requested by the Commissioner of*
 36 *Health, up to a limit of \$250,000.00 per year, to the Department of*
 37 *Health to establish and implement a program to classify and*
 38 *evaluate the threats to health posed by exposure to hazardous dis-*
 39 *charges, to determine those at greatest risk, and to conduct diag-*
 40 *nostic examinations and epidemiological analyses of victims of*
 41 *exposure at clinics located proximate to the communities of those*
 42 *victims.*

1 5. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to restructure the New Jersey Spill Compensation Control Fund by replacing the current fair market value tax on hazardous substances with a per barrel tax on hazardous substances established by the Director of the Division of Taxation sufficient to raise \$2.5 million, and a tax on the disposal of hazardous wastes, not heretofore taxed, at a rate of \$10.00 per

ton. The tax on hazardous waste will be levied on its disposal. Hazardous wastes that are disposed of at the site of generation will not be taxed nor will those which are reused or recycled for further use.

The bill also permits the administrator of the fund to spend, in any one year, up to \$15 million in total and up to \$3 million for any one discharge or series of discharges, which occurred prior to the effective date of the "Spill Compensation and Control Act," P. L. 1976, c. 141. Currently, the annual cap is \$3 million in total and \$1.5 million for a single or related series of discharges.

The bill further extends the purposes to which the fund may be applied. First, the administrator may provide up to \$500,000.00 annually to the Department of Environmental Protection for inter-agency enforcement activities; up to \$250,000.00 annually to the Commissioner of Environmental Protection to cover costs associated with the administration of the "Environmental Cleanup Responsibility Act" now pending before the Legislature as Assembly Bill No. 1231 of 1982; and up to \$250,000.00 annually to the Commissioner of Health to conduct diagnostic examinations and epidemiological analyses of victims of exposure to hazardous discharges at clinics located proximate to the communities of those victims.

ASSEMBLYMAN RAYMOND LESNIAK (Chairman): Good morning. Welcome to the City of Elizabeth. My name is Assemblyman Raymond Lesniak. I am the Chairman of the Assembly Agriculture and Environment Committee. We will be joined shortly by a few more members of this Committee. Two members of the Committee are from from South Jersey and have been excused from this hearing because of the distance. This hearing is being recorded and it will be transcribed and released to the public as soon as possible.

The purpose of this hearing is twofold. First, we will be taking testimony concerning legislation which I introduced yesterday. The bill number is A-1900, which is designed to more equitably distribute the tax burden raised from the petrochemical industry used for cleanup of chemical dump sites in the State of New Jersey, and at the same time, raise some additional monies, fund additional programs, provide incentives to dispose of hazardous waste outside of the State of New Jersey, and disincentives to bring hazardous waste into the State for disposal purposes.

The other purpose of this hearing is to receive the hazardous substance removal operations, "A Review and Analysis of Fiscal Policies and Managerial Operations," a preliminary report prepared by the Program Integrity section of the Division of Criminal Justice. This report is being officially released today, and here to offer testimony in that regard is Richard Carley, a Deputy Attorney General from Attorney General Kimmelman's office. We will also hear from the Commissioner of DEP, Robert Hughey, and George Tyler. George is the Assistant Commissioner for the Department of Environmental Protection. They will report their efforts made in response to the audit done of the Spill Fund prepared by the State Auditor pursuant to legislation which I sponsored and which the Governor signed into law, and their response to it, and also, their response to date, to the preliminary report of the Division of Criminal Justice. So, at this time -- I see he is anxiously ready to go -- we would like to hear from Richard Carley.

R I C H A R D C A R L E Y: Good morning, Mr. Chairman and members of the Committee. The Program Integrity section has prepared a report entitled "A Review and Analysis of the Fiscal Policies and Managerial Operations," concerning hazardous substance removal operations in the State.

We call it a preliminary report because it is part of an overall study that the Program Integrity Section had undertaken with respect to hazardous waste removal. This first phase addresses directly what we

perceive to be operational and managerial problems and identification of those problems with respect to site cleanups, site selection, and site management. The report is organized into three sections, the first of which provides an overview in the principles that we have brought to the study; the second of which provides major recommendations that we have provided to both the Department of Treasury and to the Department of Environmental Protection; and, the third of which provides in some detail the findings and more specific recommendations with respect to the very specific problems we have found.

The report is about one hundred pages long, so I will briefly summarize for you what the ten major recommendations are that were synthesized from the report.

First of all, the Department is recommending that a long-term comprehensive plan be established for the cleanup of hazardous waste sites. We found that site selection -- although, many of the sites that were cleaned up, in fact, should have and eventually had to be cleaned up -- was not necessarily part of an overall objective in terms of cleaning up all of the sites in New Jersey.

ASSEMBLYMAN LESNIAK: If I may, Rich, on that particular point, the Legislature has been working on that. We have legislation which passed the Assembly and is awaiting Senate Committee action. It will be on the agenda of the Senate Energy and Environment Committee, which will establish a task force of academic officials and industry officials and people involved in environmental cleanup operations, to create a model cleanup program and also establish priorities so that the considerations that are alluded to in this report are remedied in terms of a scientific basis and certain criteria and standards which were missing at the time of the cleanup control operation.

MR. CARLEY: I think that is a big step in the right direction, to start prioritizing sites and get on with a general strategy for cleanup of these identified sites.

You have touched on the second point that I have in the report, which is, establish technical work plans for every job site which potentially has to be cleaned up. One of the difficulties -- I am sure the people from DEP can provide more accurate and detailed testimony -- is that in terms of cleanup sites, we have to establish work plans that identify the scope of the job that has to be accomplished so that we can deal with Spill Fund resources adequately. We have to judge how many resources we have, what the available

funds are, and then make judgments on how quickly and effectively we can clean up various sites. Without establishing the work plans, we really don't know what the drain on the Spill Fund is going to be, and we can tend to run into the type of problems we did, as a State, where the Spill Fund essentially was without resources for several periods of time.

Our third major recommendation deals with the office of the Spill Fund Administrator. Our specific recommendation is that a significant number of responsibilities that could be assigned to the Spill Fund Administrator, or which were undertaken by the Spill Fund Administrator, be assigned to the Department of Environmental Protection, and that the Spill Fund Administrator essentially act as a monitor of the Spill Fund; specifically, collecting the tax, then simply relying on DEP to provide information to him at which time he can allocate a specific amount of money to a job cleanup. Now, the allocation of that sum of money will presumably be based on our second point, which is a technical work plan and a projected cost. Then, the Spill Fund Administrator will have a handle on what the potential drain on the Fund is. When the Department reaches a point where they are about to use up the money that has been allocated to a cleanup, they can either come to the Spill Fund Administrator and ask for more money, or account for why they need more money, etc.

ASSEMBLYMAN LESNIAK: How does that differ from the role of the Administrator now?

MR. CARLEY: Right now, the Administrator allocates on a general sum presented by DEP, but there is no absolute ceiling, as far as we understand it, that prevents DEP from spending more than the Administrator actually had originally allocated to the plan. One of the difficulties that arose during the Chemical Control job was that there were more invoices in the pipeline. More money was being spent. The bills were being submitted directly to DEP. The Spill Fund Administrator didn't know that, and at some point in time there were perhaps \$10 million dollars in costs spent for the Chemical Control cleanup and other various sites that were going on at the same time. But, the Spill Fund Administrator hadn't necessarily allocated money for that. So, we reached a point where the Fund was depleted.

ASSEMBLYMAN LESNIAK: I am not quite sure I understand your recommendation. How is that going to be avoided?

MR. CARLEY: If the Spill Fund Administrator will act for the purpose of simply approving a site for cleanup, saying this is a pre- or

post-act site, rely on DEP's best cost estimate based on a technical work plan on how much the site will cost to clean up, and ceiling that cost. If they estimate \$500 thousand, the Spill Fund Administrator will ceiling the amount that he will allow spent on that site at \$500 thousand. That is not to say that is the limit, but, it will give him at least a control on expenditures for that site.

ASSEMBLYMAN LESNIAK: And, in order for any further monies above and beyond that to be expended, there would have to be an amended request made based on the change of circumstances.

MR. CARLEY: Sure. Unanticipated things they ran into, any number of reasons. Perhaps they ran into chemicals they hadn't anticipated, all very legitimate, but, what it would give him is fund control.

ASSEMBLYMAN LESNIAK: Without that control, any and all amounts could be spent without any checks and balances on that procedure.

MR. CARLEY: Well, that is one of the difficulties that the Fund faces. Yes. With two different departments involved in administering the Fund, that possibility can occur.

Our fourth point ties to the third point, and that is, expand significantly the fiscal responsibilities of the Department of Environmental Protection with respect to the expenditure of Spill Fund monies. I guess the thing I want to specifically dwell on here is that the DEP should set up a job-cost accounting system where they can analyze particular costs that are incurred at particular job sites. That way, they will be able to determine where they are spending their money, what the major expenditures are for labor, equipment, expendable equipment, technical expertise, and so forth. By doing so, they will be able to find out what phase of these cleanups are costing them the most money. They will be able to identify problems. If they can identify, for instance, that expendable equipment is costing what appears to be a phenomenal amount of money, that is problem identification. That gives them one piece of information they can work with.

The second step they go to, then, is perhaps solving whether expendable equipment can in some way be remedied and get the cost of the system down, get the cost of the cleanup down with respect to that type of equipment. Perhaps the problem is not solvable in light of the nature of what we are doing here. Perhaps you have to use up a lot of expendable equipment like uniforms and gloves and things like that. But, at least it will allow them to identify problems and then effectively analyze if we are spending money in the best way we can at these cleanup sites.

The fifth point we are making is significantly limit the use of time and material contracts. Now, when the Spill Fund first started functioning, various vendors were invited to make bids. At the Chemical Control job, in particular, the contractors functioned on what are known generically as the X83 contracts. All of those contracts are time and material contracts, and I would venture to say that they were contemplated for emergency situations, or they best serve emergency situations in the least. Well, what happens in various situations is, you lose control over your costs when you allow contractors to build strictly on a time and material basis. You are open-ended to a job. As long as the job runs, the contractor is billing you at the rates he has identified. One of the problems with the X83 contracts is that we appear to have perhaps paid premium rates for all equipment. We paid for stand-by time for equipment that was on the sites. If we can escape that and only use time and material contracts for identified emergency situations, we will be able to go to another contracting methodology and more effectively control the cost for those non-emergent cleanups.

ASSEMBLYMAN LESNIAK: And it is your opinion that the Chemical Control cleanup was not an emergency situation?

MR. CARLEY: Oh, no doubt about it. When it first started, the Chemical Control cleanup was definitely an emergency. The way to proceed was to immediately bring in contractors, as they did. But, in order to avoid future problems in terms of the use of time and material contracts, we should find a way to confine the emergency. Perhaps at some point in time we could have said, "Well, we have the emergency under control at this site, now let's go to a fixed fee. Let's get people bidding against each other to see if we can get the costs of particular pieces of equipment and man-hours down."

ASSEMBLYMAN LESNIAK: But, that wasn't done at Chemical Control? Basically, throughout the cleanup operations, it was considered an emergency.

MR. CARLEY: It was conducted on an emergency basis under the only contracts available. Now, DEP did attempt, with respect to heavy equipment they were using to get the cost down there by paying only a portion of the hourly or daily rate for equipment that was standing by. They paid 40% for idle equipment, rather than the full operational value. I think by going to fixed fee contracts, we can get to an even more effective contracting method.

ASSEMBLYMAN LESNIAK: How would you have an emergency defined? By the Commissioner, or--

MR. CARLEY: I think -- in terms of defining emergency -- that the Department is going to have to identify it and we are going to have to give the Department leeway as the experts in this area for defining what an emergency is. Now, if you have an immediate danger -- I believe the statute even defines generally what an emergency is -- to the public health, safety, and welfare, I think as a matter of policy, we want to give DEP the benefit of the discretion we vest in them to exercise that and use emergency means when that is threatened, or at least to confine the emergency until it is under control. Perhaps the spill stopped, but now we have to clean up the mess. Maybe cleaning up the mess is not an emergency, and we can go to a fixed-fee type of contract.

ASSEMBLYMAN LESNIAK: Doesn't the definition of an emergency also depend upon the amount of funds available in practice? Wouldn't you think that we have quite a few emergencies present right here, in the State of New Jersey, now, and that if we had the money available, action would be taken immediately?

MR. CARLEY: I don't pretend to be an expert on whether sites are emergencies or not. I believe there are many hazardous waste sites that demand action at some point in time. Obviously, if we had the resources, we would like to clean up as many as we can, as quickly as we can. But, I think the first step is -- going back to the beginning -- let's identify the worst ones in a plan. Let's get technical work plans so we can identify the worst ones. Let's clean up the bad ones first and at least confine those that don't need as much immediate attention. This is a new area, and it is developing and we need expertise brought to bear on it.

ASSEMBLYMAN LESNIAK: But, in summary, vis-a-vis in Chemical Control, that was handled basically from its inception in terms of the DEP cleanup operation, and in terms of where the contracts go to this very day maybe, or at least to a large extent as an emergency, when basically, you are saying at some point in time the emergency ceased and then--

MR. CARLEY: Yes. First of all, it was handled on an emergency basis, based on the contracts throughout. Second, I am saying, at some point in time, perhaps, we should have looked at it and said, "Is this a continuing emergency, or can we confine this to -- can we go to another contracting methodology?" I am talking strictly about cost and accounting for the State's money.

MR. CARLEY: Our sixth point ties to point five, and that is, go to cost plus fixed-fee contracts or fixed-fee contracts. We have any number of sites that we have identified in the State as warranting cleanup. After we get a technical work plan, perhaps we can put out the specifics of that technical work plan and ask contractors to come in and bid and get into an effective, competitive bidding situation. Under the time and material contracts we were dealing with, some of the equipment was paid for over and over again at various job sites, because we were paying daily and hourly rates for that equipment every day. If we get into a fixed fee or a cost, plus fixed-fee contract, at least we know what our exposure is and at least we know that one contractor is bidding against another contractor, and he is going to try to get his cost down as low as he can in order to gain the contract.

ASSEMBLYMAN LESNIAK: Wasn't the time and materials contract also a bid, or was that not a bid?

MR. CARLEY: No, it was simply proposals that were put out to the contractors and then the contractors submitted their cost for identified pieces of equipment and what they would charge us.

ASSEMBLYMAN LESNIAK: I haven't had an opportunity to look at the report. It was dropped on my desk this morning. Is there anything in here, in here vis-a-vis how that contractor was selected, and what criteria was used, and whether appropriate steps were made to select the right contractor to do the best job at the lowest cost?

MR. CARLEY: At Chemical Control?

ASSEMBLYMAN LESNIAK: Right.

MR. CARLEY: Chemical Control--

ASSEMBLYMAN LESNIAK: This isn't just limited to Chemical Control, is it?

MR. CARLEY: No, it is not. In fact, Chemical Control is simply one example. We were studying the departmental and divisional operations with respect to cleanups in general. The report does deal with selection of contractors, and cites the informal method by which they are selected, and it cites an example in there that can present difficulties in terms of public perception for how that methodology is done.

ASSEMBLYMAN LESNIAK: Is there anything beyond difficulties involving public perception, and has the investigation to date indicated any probable cause or reasonable suspicion that there was any fraudulent activity or collusion between the Department and contractors?

MR. CARLEY: I would not make a positive statement because there are too many elements that we are awaiting. For instance, the Coopers and Lybrand report, which is anticipated within three or four weeks, will be of significant assistance to us in making judgments on fraudulent activities. That aspect of our investigation is continuing. I would rather not comment, except to say, if any particular fact had warranted more public action by the Division of Criminal Justice, it would have been accomplished by the State. So, that is still going on.

I would also note under the cost, plus fixed fee, we, at some point in the report, advocated that DEP employ a contract administrator and build into the contracts a reasonable criteria. In other words, we will accept your contract to us with the fees you are charging, but, we also want at some point in time to be able to come back and audit the cost you have given us and make sure that those are reasonable costs, so that we are not paying for all the equipment you have ever bought in one short job. A contract administrator, who can oversee these contracts before they are entered into, would be very effective towards that end.

Our seventh point is to have the Department engage in uniform, independent on-site recordkeeping. What we are advocating there is that recordkeeping at the job site, based on the sites we have studied, has to be improved so that DEP can have an independent recordkeeping system of exactly the services they incurred at the job sites. The difficulty -- and I guess Chemical Control maybe highlights it, but it is similar to other cleanups -- is that the contractors have been depended upon to prepare the records, which then became the basis for billing the State. Now, if the contractors preparing the records that are going to be billed to the State, we, as a government, have no independent information to make a judgment on whether or not those records are accurate. So, the opportunity to do something that may not be ethical or appropriate is there, and certainly, anybody would give himself the benefit of the doubt when billing, if they believe they have incurred an expense. We want an independent recordkeeping system that DEP can throw against the billing that the contractor submits and make a judgment based on what their own people say from the site, that these expenses, this labor, this equipment was actually used and employed at the site.

ASSEMBLYMAN LESNIAK: So basically, at Chemical Control, Lone Pine, and the other cleanup operations, the contractor's invoices were accepted at face value?

MR. CARLEY: They weren't necessarily accepted at face value, but we have to do a significant amount of reconstruction in terms of getting sufficient records to audit. But, there was an attempt by the Departments to audit those records. In fact, there are still outstanding invoices, so, to say that--

ASSEMBLYMAN LESNIAK: But, the audits made it much more difficult because there wasn't any independent recordkeeping--

MR. CARLEY: Certainly the audits are more difficult because of that. So, I think that is remedied. Plus, you pick up another benefit. Not only do you get records that can be audited, but you give excellent accountability to the Department. When you have no records and no methodology for accounting, the opportunity to engage in improper conduct is benefited greatly. Once you set up a recordkeeping system, you have taken an important aspect away from those who would engage in fraudulent activity.

Our eighth point is, to design and implement formalized training for persons engaged in hazardous site cleanup and management. What we saw was that the on-site coordinators received informal training. Obviously, there aren't schools around that deal in this type of thing, where you can send somebody for six months.

ASSEMBLYMAN LESNIAK: We could probably open up a school by now, though.

MR. CARLEY: But, the informal training that they engaged in became almost on-the-job training. Their resources were tested because they were doing various sites at various times, and, at some point in time, it actually became necessary to draw individuals from other divisions in the Department to function as on-site coordinators. Site cleanup may be somewhat akin to a construction job, so you want to get people training in familiarity with the type of equipment that is being used, you want someone who is capable of following the technical work plan that hopefully had been started for that job site, and seeing that you advance. When a problem is brought to that on-scene coordinator, you want him to be able to make a judgment on the smaller problems and to realize the scope and impact of any problem that may be called to his attention. So, that is a matter of training the people in the Department to effectively function. Some states contract that whole thing out to expert agencies. This State has chosen to have the Department of Environmental Protection do it and we should train the people.

ASSEMBLYMAN LESNIAK: I do want to ask you about other states. Have you looked at the cleanup programs in other states?

MR. CARLEY: We haven't looked at it in any detail or explored it, but, I do want to mention one aspect. I believe it is the State of Massachusetts that engages in contracting out significant portions of even site management to private concerns.

ASSEMBLYMAN LESNIAK: Isn't the State of Massachusetts' cleanup operation on a much smaller scale than what we have been involved in? I was down in Atlanta on a panel with a representative from Massachusetts, and they had a site there that was very similar to Chemical Control. It almost looked just like Chemical Control. At that time, they were allocating \$250,000, and nothing was really being done about that.

MR. CARLEY: I can't really state what the scope of Massachusetts' problem is, but it certainly can't be broader than the State of New Jersey.

ASSEMBLYMAN LESNIAK: But how about their response to that problem? You are not aware of that either?

MR. CARLEY: I'm sorry, I am not.

ASSEMBLYMAN LESNIAK: Or any other state?

MR. CARLEY: We haven't studied other states in any detail.

MR. CARLEY: Our ninth recommendation is to deal with a kind of communications recommendation, and that is, establish formal procedures for case disposition and exchange of information between the Spill Fund Administrator, the Department of Environmental Protection, and the Division of Law and the Department of Law.

ASSEMBLYMAN LESNIAK: Can we include the State Legislature and this Committee on that?

MR. CARLEY: Sure.

ASSEMBLYMAN LESNIAK: I know what you are talking about in terms of investigation of sites themselves.

MR. CARLEY: Investigation of sites, identification of potential individuals who may be liable for having caused the situation--

ASSEMBLYMAN LESNIAK: Is it possible that some of the work that DEP did should have been reported to the Attorney General's office in terms of evidence for prosecution?

MR. CARLEY: Well, that is normally what is ultimately done. By establishing formal procedures, that information-- We want the information reported in a more formal methodology so that quicker action is undertaken and more thorough information is reported. That goes into the tenth point I am going to make.

ASSEMBLYMAN LESNIAK: Has any of what was done in the past inhibited either criminal or civil prosecutions to either recover the money or prosecute the people for criminal violations because of the lack of communication?

MR. CARLEY: Well, I would say that the ultimate disposition of some cases, or the action brought up against some responsible parties, has been delayed because of an information flow, and I am not so much talking about prosecutions as I am talking about actions that the Division of Law would take in terms of going after responsible parties for the spill. But, there is a resource strain in both areas, obviously, both in the Department of Environmental Protection and in the Division of Law, in terms of dealing with each and every case that arises. So, I am not prepared to say that any prosecution has been inhibited because I am simply not familiar with all of the prosecutorial aspects. As far as I know, that has not occurred. But, insofar as expeditiously dealing with going after people who are responsible for spills, I believe that has been effected by not having a better exchange of information.

ASSEMBLYMAN LESNIAK: Basically, haven't we been very unsuccessful in recouping Spill Fund monies from responsible parties?

MR. CARLEY: Well, I think there are others that can better testify to that than I, but I think it is now beginning to come together, in terms of identifying specific responsible parties.

Our tenth point is simply dealing with a centralized record repository, which goes to the last point I made as well. In the beginning, there were many divisions in the Department of Environmental Protection that had some input or some responsibility for various types of cleanups. The Solid Waste Administration had some information, obviously the Division of Hazard Management had some information, and the Division of Water Quality had some information.

We are advocating that all of those pieces of information come together at some central repository in the Department so that the information flowing into the Spill Fund Administrator and the information flowing into the Division of Law can flow in from one source, and we know all of the facts that pertain. That just doesn't go to legal action; that goes to identification of the worst sites as well. Many of the sites have been identified as hazardous waste sites. There is information in the Department that has not, perhaps, been brought to the attention of the Division of Hazard Management,

which in order to effectively evaluate -- or even to do a desk audit, in a sense -- to assess how serious the problem is at that site, cannot as effectively do it if the information known to another division in the Department is not known to the Division of Hazard Management.

ASSEMBLYMAN LESNIAK: Was that a common occurrence in the past?

MR. CARLEY: Well, the diversification of information -- I think there was an occurrence. I think there were attempts to bring it together.

ASSEMBLYMAN LESNIAK: Infrequent?

MR. CARLEY: Infrequent would be correct. Yes. But, I think there were attempts to remedy that. I think bringing a central record repository in, would make it more effective.

ASSEMBLYMAN LESNIAK: Is that all ten points?

MR. CARLEY: That's all ten.

ASSEMBLYMAN LESNIAK: I wish I had the opportunity to look at this. I'm sure that we will be calling you.

I appreciate you bringing this report down to our Committee, because most of the points you raised were administrative matters; nevertheless, there are some recommendations in here that would require legislative implementation.

Do you know of any other site in the United States that has been cleaned up to the extent that Chemical Control was?

MR. CARLEY: I'd be guessing if I engaged in that. My background is not generally in environmental prosecution, so there may be one. I am simply not aware of it.

ASSEMBLYMAN LESNIAK: Okay. Mark, do you have any questions?

MR. SMITH: No.

ASSEMBLYMAN LESNIAK: We thank the Attorney General and we will be awaiting his follow-up report on this.

MR. CARLEY: I thank the Committee for this opportunity. Thank you.

ASSEMBLYMAN LESNIAK: At this time, we would like to call on the not so brand new Commissioner. He has now had nine months on the job. I think he is doing a very excellent job to date. Commissioner Hughey, good morning.

C O M M I S S I O N E R R O B E R T H U G H E Y: Thank you.

ASSEMBLYMAN LESNIAK: Commissioner, I also appreciate the fact that you have come to visit the great City of Elizabeth and joining us today. I did specifically ask you, and I imagine you have something prepared to respond to-- I don't know how much you can respond to what was said previously, if you had the time, but I would also like you to respond to the audit report and what implementations the Department has done concerning those recommendations.

COMMISSIONER HUGHEY: Thank you for inviting us. As you know, I wanted to come today as much as anything else to thank you for the efforts you have put into hazardous waste issues, and particularly in working with our Department. I think this Committee knows that many efforts have been undertaken in the last nine months to address some of the issues that we have just heard of from the Attorney General's office. The reason I thought it was particularly important today to come, was that I think we have finished one era of our Spill Fund effort in our hazardous waste cleanup effort in New Jersey. I think it is very important that we all recognize that we are moving on to a new era.

We have undergone a lot of training in the last couple of years; some of it required major fixing, and I think we have taken those steps, steps to correct what we thought were inadequacies in the system. At the same time, and I think you alluded to it before-- I think we must recognize that despite what would have been some (inaudible) and starts in the last couple of years and the need for considerable change, we have accomplished a lot in New Jersey in terms of our hazardous and toxic waste cleanup effort. Everybody realizes that we have to accomplish a lot because we have a lot to clean up in New Jersey, and I think in many respects, we are -- as you alluded to -- one of the top states in the country in terms of mobilizing an effort and seeing that effort through to fruition. Within recent months, we have signed three Superfund contracts. I think we are very close to signing a whole series of Superfund contracts. We had 12 sites listed on the first list of Superfund, which I think led the country. So, despite ourselves, in many cases, we have moved forward fairly aggressively.

ASSEMBLYMAN LESNIAK: I don't know if we can brag about the fact that we have 12 sites on the list, except for the fact that we did the work to get them on the list.

COMMISSIONER HUGHEY: I think with regard to toxic and hazardous waste, we are going to find ourselves in a position where we are always going

to be in a reverse bragging position. We have hopes of listing somewhere between 70 and 90 sites on the new list, which is due out in October. If we were to do that, we would exceed any other state on the list by probably 80, and in a way, I guess that is to our detriment. Publicly, I think some people would react exactly the way we would expect them to and say, "Oh, my goodness." The fact is that we have an aggressive program in trying to list sites and we recognize the sites that we have in New Jersey.

ASSEMBLYMAN LESNIAK: I certainly can't hold you responsible for Superfund, but can we realistically expect that 80 or 90 sites would be funded? I mean, it is one thing to be on the list, and it is another thing to receive money. We have some serious problems that you know about, and actually, it seems like the trickle-down theory has been practiced in Superfund and very little money has been forthcoming to date.

COMMISSIONER HUGHEY: Well, through your efforts, those of others in the Legislature, and our Congressional delegation, I think New Jersey has probably taken the most aggressive posture in the country, with regard to Superfund. And, as I said just minutes ago, in the last three months, we have signed three contracts and I think that we will be seeing a whole series of contracts signed by the end of this month. So, I am very optimistic. I am optimistic in that I think we have learned how to work the system and I think we are working it to our advantage.

ASSEMBLYMAN LESNIAK: I would agree with you on that. I am not as optimistic in terms of the ultimate flow of money. But, in any event, we are here to find out what we are doing on our own.

COMMISSIONER HUGHEY: I think our point in being here today, as a group, the Attorney General's office, my office, and the Treasurer -- who would have been here today -- is that we have taken a concerted effort, I really think, in the last nine months, taking a coordinated look, a unified look, which has included the Legislature at our Spill Fund efforts and our hazardous waste efforts in general. I think we have learned a lot. One of the reasons why the Treasurer and I, at the conclusion of this hearing, will be formally releasing our internal review is, that we want that to coincide with the Attorney General's release. We think it is time that the citizens of the State of New Jersey realize that government can work in a coordinated fashion and we can take a broad look, and we think it helps to cut down on the confusion which existed in the past.

It is our hope that from this point, we can move forward collectively, and I think you will see what we have tried to do, Assemblyman Lesniak, at your request, is, we have taken the recommendations and findings listed in the Attorney General's report and have placed next to that, in chart form, the efforts that have been made already, and those that are anticipated in the net couple of months to react to those recommendations and findings. We had prepared it in draft form for release today and I think with your permission, I can just work-- I don't know if you can see that or if it is any advantage to have it there. We do have a reproduction of it, and I will work off the reproduction with you. With your permission, I will just go through the recommendations in the same order that they were given and try to tell you what we have done to react, and in many cases, to anticipate.

I think one of the things you will realize after I am done testifying is that every group that has looked at this program has reached pretty much the same conclusions and what the weaknesses are, and as a result, we have been able to move a lot of the recommendations forward as early as last March.

The first is the need for comprehensive cleanup planning. I think that the first priority list had some weaknesses. It was put together very quickly. It was first released in January of 1981, and I think it was released as a reaction to Superfund procedures and in an effort to get us into a qualifying position. It has been updated on a regular basis. The most comprehensive updating that we have ever had is going right now. That is a result of trying to prioritize our list for the next Superfund round, which is October, and which we have submitted 91 sites. In addition to that, we are using a similar formula to the Miter formula, which was developed by EPA, in order to rank our other sites, which I think is consistent with the legislation that you have discussed.

ASSEMBLYMAN LESNIAK: I see the need for the legislation because of the fact that basically what we do want to do is remove political involvement from this process as much as possible. I know that we have been the beneficiary of that political involvement here, in the City of Elizabeth. Nevertheless, I think you would agree that in terms of the long-term planning in tackling this problem, it ought to be removed from political considerations that you or I may have and the criteria established under legislation that the Senate is now committing, would certainly go a long way to avoiding that problem.

COMMISSIONER HUGHEY: I think we agree wholeheartedly with the approach. That is one of the reasons we are using the Miter systems now, both for those that we are trying to rank on Superfund, and those that we are trying to rank ourselves. I think everybody who is affiliated with this program realizes that when you have somewhere between 200 and 350 viable sites for cleanup in the State, that it has nothing to do with politics. It is an effort that is going to be an ongoing effort for a number of years. It is not going to be a one-year turnaround, and therefore, you have to be able to rank by, in terms of priority and how they affect the public and the public need. And that is one of the things that we have been working on, on a very sustained effort in the last nine months, and we will probably be releasing both our Superfund list and our secondary list, which is our State fund list, within the next month and a half.

The second recommendation was the need for well-defined cleanup site work plans. The Treasurer's Office and my Department began to implement new procurement procedures in March of 1982. Essentially, those procurement procedures require formal bids on all work. They also require detailed scope of work to precede the bid. Now, this is one of those things that I think has to happen as the program matures. It also has a cutting edge which affects some people negatively, and I think you and I both have seen that in Committee hearings. We have tightened up the process. We are now formally bidding on a regular basis, and have been since March. As a result, there were some projects that were ready to go, probably under the old emergency process, which would have been done at this point. I am talking about some very simple cleanups, canister cleanups, and yet, we have to stick to the formal process. I think in the long run, we are much better off doing that, but there is an inconvenience on the other side.

ASSEMBLYMAN LESNIAK: Do you have criteria for defining emergencies so that procedure could be, in emergency situations, accelerated?

COMMISSIONER HUGHEY: Within limitations. We have factored in monies that can be spent up to a certain level within the Department to react to an emergency situation, a very small level. It is now \$50,000. But, at every step beyond \$10,000, it requires another signature. By the time it gets to \$50,000, it requires our Division Director and Bureau Chief involved, George, and myself. And at that point, it is sent over to the Spill Fund Administrator. Beyond that, it would require a Committee review which includes a Committee that consists of the Treasurer, up to \$250,000. Beyond

that, we are trying to take things out of that emergency level. Now, one of the reasons why I think we are getting close to the point where we can do this is, with a priority list, it seems to be working. We know what the emergent nature of a situation happens to be. In reality, I don't really think anybody could come to terms with a definition that classified hazardous waste as emergent or non-emergent.

ASSEMBLYMAN LESNIAK: It is like a depression or a recession.

COMMISSIONER HUGHEY: That's right. The third recommendation is -- and I think three and four sort of work together -- to eliminate a split in the administration of the Spill Fund, and the fourth recommendation is, to expand DEP fiscal responsibilities. Those two things really go hand in hand. I think that the Spill Fund Administrator has done a remarkable job with very limited resources. You are always caught, I think, in an inevitable "Catch-22" situation, where the responsibility for one part of the program is within one department and the responsibility for the fund administration of that program is in another. Both the Treasurer and myself feel that it should be in one department. We have chosen DEP because DEP is going to have the on-site people who are involved in the process. As a secondary step, or first step, to getting there we, as I think you know, have already reorganized our waste management group which hits another point that we will get to later, and there are now three auditors, field auditors, within that group and there will be six by the end of this year. And, it is our hope that we can control this process on an ongoing basis rather than wait for the point where it gets to be a crisis and then ends up on Bob Hunt's desk, who is going to be testifying next. But, I think the only way to formally put the responsibility in one place and make sure it is carried out to put it in one place and not in two places. I think it is our recommendation, it is consistent with the Treasurer's recommendation, and I suspect it will be but one of the recommendations that will follow out of the Coopers and Lybrand study, but I can't anticipate that.

ASSEMBLYMAN LESNIAK: Will that need legislation to implement it or can that be--?

COMMISSIONER HUGHEY: That would definitely be a legislative change. Even as recommended earlier by the Attorney General, this is the key point of a legislative change in the proposal.

Point five is to restrict the use of time and material contracts. Our time and material contract days, I think, are over. Those are limited

to the emergent situations. All the other contracts will be on bid. All those bids will follow a scope of services which is one part of the study process that we undergo initially now, in terms of the landfill or solid waste or hazardous waste site. In addition to that, we have changed, I think, the nature of the way we do contracts. We have also asked a whole series of New Jersey corporations to begin to think about hazardous and toxic waste cleanups as an avenue for the eighties and for their future. We have had discussions with a number of utility contractors in New Jersey who are very affected. We have tried to expand our list of potential contractors within the State, and we think we have the capability. The people have just never really been introduced to this field.

The next recommendation, which is tied in, is to use fixed-fee contracts when there is not an emergency and use a contract administrator who will evaluate contracts. We are, as I said, doing that. Fixed-price contracts will be used in all non-emergent situations or when an emergency has been alleviated, which is, I think, what the Attorney General's representative was discussing today. I think there are ways to cap the emergent nature of a situation and then get it into a regular fixed-fee contract, and that is what we now attempt to do.

ASSEMBLYMAN LESNIAK: Wouldn't a contract administrator also deal with a contract in an emergency situation also?

COMMISSIONER HUGHEY: Contract administrators deal with it in any case, but, I think what we are going to be seeing in the future is that there will be a consistent contract administrative contact with the project. It is one of the reasons why we want to get people in the field who understand what is going on at a site.

ASSEMBLYMAN LESNIAK: Have you advertised for this position yet?

COMMISSIONER HUGHEY: We have three people hired, and we have advertised, yes.

The next recommendation is to develop a uniform recordkeeping system for internal and external use. We did that on March 1, 1982. We are now pinpointing recordkeeping responsibility and we have checkpoints through both audits and roving accounts on a regular basis. As I said, we now have three people who are performing that function.

The next recommendation is to develop a comprehensive training program and manual for all hazardous waste management responsibilities. I think there is no doubt that we can use more training. There is no question

that every state in the country can use more training in this field. In fact, New Jersey, as advanced as we are, is now providing training in emergency response for some of our neighboring states and reacting to crises on their behalf, which doesn't mean for a minute that we don't have a long way to go; it means that the people around us have longer.

The next recommendation is to establish formal procedures for spill disposition, case disposition, and information exchange among the Spill Fund Office, the DEP, and the Division of Law.

I would submit to you that I think largely these procedures are already in effect. There may be a need for better communication as I heard this morning, but there is a process whereby directive letters are sent from the Department notifying a potential liability, and we go through an administrative process prior to turning it over to the Division of Law for corrective remedy if an administrative process doesn't work. In the majority of the cases, the administrative process has worked, but I think we have to have a better and fuller dialogue on how we can make that operate better between the Division of Law and ourselves

ASSEMBLYMAN LESNIAK: One of the most serious problems of the past, and I know you weren't around at that time, was that the administrative process was dragged out much too long. As a matter of fact, that was one of the more serious problems with Chemical Control. Voluntary compliance was the rule and actually, voluntary non-compliance was also the rule. The Department was seeking voluntary compliance and what they got was voluntary non-compliance. I am sure that you are aware of that experience.

COMMISSIONER HUGHEY: I don't think it is a field known for volunteering and we are aware of that. I think, if I can tie into ten, which is--

ASSEMBLYMAN LESNIAK: You are aware of that now. The Department three years ago, four years ago, was not.

COMMISSIONER HUGHEY: I would buy that. I think number ten is, the institution of a centralized recordkeeping depository. I think nine and ten have some common ingredients in terms of the steps that we have taken within the Department which you are alluding to. First of all, we, with the help of the Attorney General, have recognized that we do have attorneys in the Department of Environmental Protection, and those attorneys now function together, which is different than it had been in the past where they were separated into divisions. They now work closely with both me, and, I hope,

the Attorney General's office, in terms of preparing files for future turnover. And, I think that has been an inadequacy of the situation. We recognize that and have put them together and they are now cross-feeding, and I think very well. In addition to that, we have centralized into waste management, solid and hazardous waste. What we have done is eliminated series of bureaus and automatically centralized recordkeeping through a change in the Department structure. We now have one set of records that apply to what could potentially be enforcement cases in the future. I think that should go a long way in correcting the deficiencies that were very visible in the past.

I guess that is where I would conclude, subject to your questions. I am not an apologist for any past program, but I want to put it in the proper perspective. We have had tremendous cooperation from both the Attorney General and the Treasurer, and for the last nine months, we have been coordinating our efforts to, I think, really put into a pragmatic and uniform fashion, a very difficult field. It is not an easy field to deal with unemotionally, as you know, and I think that response in the past has frequently been based on emotion. We have tried to eliminate that to the extent we could. We have reorganized the Department in order to be more responsive. I think we are far better organized to handle the problem, but, I think with or without me, or with or without some of the changes we have made in the Department, we would have been better organized because we have grown up a bit with a very difficult issue. It is my hope that we can now move forward in the spirit that we have developed in the last nine months and really attack the hazardous waste problems in the State of New Jersey. I am convinced, having been at hearings as you have been at hearings throughout the eastern United States, that we are a leader in this field. We didn't get our experience easy. We didn't do everything right, and we have made a lot of corrections. Corrections mean that you didn't do it right the first time. But, I think we have learned and we have done well, and I think we can proceed together. Thank you.

ASSEMBLYMAN LESNIAK: Thank you. I basically concur in what you said. I am on record over and over again, from the origin of the discovery of Chemical Control concerning the inadequacies of governmental actions in this regard.

I agree. I think we have come a long way. I think we have come a great distance under your a ministration in the last nine months. The intent

of this Committee is to learn from the past so that in the future our operations could be more effective and we can get the job done. I am looking forward to the next three years and three months and then we will talk about the rest after that. Thank you, Commissioner.

At this time, we have-- By the way, we have also received-- I don't believe we will be putting either of these into the record. However, I presume available for public information is both the preliminary report of the Division of Criminal Justice and also the Department's response. Actually, it is entitled, "Historical Perspective and Recommendations for the Future." We have the Spill Fund Administrator here, Mr. Robert Hunt. You have been here and heard the testimony of the Attorney General's office and the Commissioner. Do you have anything in response to that?

ROBERT HUNT: Well, I think the Commissioner responded very well to all of the points and presented you with a report which was prepared by the Commissioner and the State Treasurer, and spoke extensively to what is embodied in that report. I can only say that I know the State Treasurer is completely with that.

ASSEMBLYMAN LESNIAK: No one can hear you, Mr. Hunt. We are going to have to try to get some volume on these things. If you would please speak up as much as you can.

MR. HUNT: All right. I can only add that I know the Treasurer agrees in total with the Commissioner, and I would be glad to respond to any questions that you might have of me, individually.

ASSEMBLYMAN LESNIAK: You are basically endorsing what was said by the Commissioner, speaking for yourself, and the Treasurer?

MR. HUNT: That is correct.

ASSEMBLYMAN LESNIAK: You feel comfortable that the new procedures initiated in the fiscal area of the administration of the Fund will go substantially towards alleviating the problems that have been in the past, is that--?

MR. HUNT: I think there has already been evidence of that. We have been working with these to some extent since March, and there has been a dramatic change in our approach and the procedures are working very effectively.

ASSEMBLYMAN LESNIAK: Why wasn't this done in the past?

MR. HUNT: It is a question of backing up and taking a look at where you have been and then what you have come through with, and then reassessing your position.

ASSEMBLYMAN LESNIAK: When do you anticipate the Spill Fund audit -- the internal audit or the outside audit -- to be?

MR. HUNT: You mean the Coopers and Lybrand audit?

ASSEMBLYMAN LESNIAK: Right.

MR. HUNT: I think Mr. Carley made reference to three to four weeks. He is managing that audit with Coopers and Lybrand. I learned last night on inquiry that it will probably be some time in October.

ASSEMBLYMAN LESNIAK: Do you have any preliminary results from that report?

MR. HUNT: No, I don't.

ASSEMBLYMAN LESNIAK: You are certainly familiar with the auditor's report which came out in May. There were some recommendations made in that report, and the Department and yourself, through the Treasurer, responded to it, concerning the written procedures to govern the activities financed through the Fund. What written procedures are there present now that weren't present before?

MR. HUNT: You will find contained in this report a copy of written procedures which have been jointly adopted by DEP and the Treasury Department, which basically define the approach to fiscal management for cleanups.

ASSEMBLYMAN LESNIAK: Okay. Well, that being said, I really have no further questions. The Committee is going to review both of these reports. As you know, we are charged under resolution passed by both houses to conduct an investigation concerning the cleanup, both programatic and fiscal, of the Chemical Control and other sites that are in New Jersey. Basically, with these two reports now in and with the audit report expected to be completed, you said in October, I think we will have the basis for conducting the joint Committee hearing and would anticipate sometime in the near future to be calling you back and being in a better position to present further questions based on these two reports.

MR. HUNT: Thank you.

ASSEMBLYMAN LESNIAK: Thank you.

That concludes the first part of our hearing which, as you heard, concerned two reports. George, did you come back to give more testimony, or--?

MR. TYLER: I just can't keep myself away.

ASSEMBLYMAN LESNIAK: Concerning the Attorney General's report and the Department and Treasury's joint response, this Committee and myself have not had an opportunity, of course, to review those reports. They were just presented to us today. However, as I just previously said, they will be used as a basis for the joint Committee's hearing, which we will conduct pursuant to a resolution passed by both houses.

At this time, we are going to get involved in A-1900, which represents a substantial change in the way the Spill Fund tax is collected. This is really separate and apart from the expenditures under that Fund, and we hope and expect that the changes made to date will go a long way towards effectively spending that money on behalf of the public. However, separate and apart from that issue is the amount of money that we raised for cleanup operations and the method in which it is raised and what purpose it is generally used for.

Just some brief background information. The Spill Fund was established in 1977 and it was at that time a one-cent tax on petroleum products and chemical and hazardous materials brought into the State of New Jersey. That was fund raised approximately \$7 million a year and it was designated to clean up spills. Primarily, it was thought at that time it would be oil spills from tankers, and that is what the fund was established for, and it started accumulating money because the money raised was for far in excess of any expenditures to be made to clean up spills. It was a year later that the extent of the Chemical Control problem, was first discovered and the emergency situation explained to the Legislature. At that time, I introduced legislation to amend the Spill Fund. That legislation created an additional tax on hazardous chemicals to raise substantially the same amount of money that was raised from the petroleum products, which was \$7 million. That \$14 million a year, on top of the money accumulated in the Fund from the previous tax, was then authorized to be used for chemical dump cleanups.

There was a section in there that defined imminent hazards and although past chemical dumps were capped, in terms of the expenditure by the State, at one point, \$1.5 million per site and \$3 million throughout the State, the imminent hazard definition, which was patterned specifically after the Chemical Control site, and as a matter of fact, we drafted portions of an affidavit to describe the Chemical Control site, onto that legislation. That enabled us to provide the money to eliminate the hazard and emergency at

Chemical Control, and we are some twenty-six million dollars later. The 60,000 barrels which were stored there, one on top of another, three and four high, alongside of explosives and radioactive wastes, and many cancer-causing materials are no longer on that site. That site to date remains the only site in the nation that has received any such extensive cleanup operation. Many other sites throughout New Jersey, throughout the United States, have not been touched yet.

However, the legislation that was passed, basically to get funding for that site first, that need is now over and that legislation there has some problems with which I recognize and which I recognized when I originally sponsored it. One of the problems is that it presents an inequitable burden on chemical materials and an inequitable tax, and that is based on fair market value which may not have the proper relationship to the risk exposed by the community. So, because of that, be, we are hitting a small number of companies when a large number of companies produced the waste. Some less than 100 companies, I presume, pay the chemical tax into the Fund now. Over 1,500 are producing the waste. So, in order to more equitably distribute that tax burden and to provide other incentives and other programs, legislation has been introduced as of yesterday. The number of A-1900, and if I could have a copy of it, I will review the significant points in the legislation and just briefly comment on my reasoning why I have proposed these changes, and then we will ask for testimony concerning these changes.

By the way, we have a list of people who want to testify. If anyone else -- I am sure they do -- wants to testify regarding this legislation and its objectives, or quite frankly, anybody from the community wanting to testify at the end of this presentation, please give your name to Mark Smith over here.

First, what this bill does is it changes the fair market value tax on hazardous materials which raises some \$7 million a year and reduces that tax from \$7 million to \$2.5 million. The way that tax will be raised on hazardous materials will be on a per barrel basis rather than a fair market value basis. In addition, there will be a tax under this legislation collected by the disposal sites throughout New Jersey, and there are some forty?

MR. SMITH: Between 50 and 60, I believe.

ASSEMBLYMAN LESNIAK: Excuse me. Between 50 and 60 disposal sites throughout New Jersey which will be at the rate of \$10.00 per ton. That rate

will raise for the State approximately \$7.5 million for a total of \$10 million raised from the chemical aspect of this fund, an increase of \$3 million. The 50 to 60 disposal sites, of course, will pass on that additional cost of disposal to the generators, which will be paid by some 1,500 generators. We have some facts and figures regarding the amount of tons that we are speaking about that are disposed at these sites. Do you have that, Mark?

MR. SMITH: The best estimate puts the disposal of hazardous waste at about 950,000 tons.

ASSEMBLYMAN LESNIAK: Per year?

MR. SMITH: Yes, per year. In 1981. About that much was generated in the State and about that much was disposed of in the State. However, some of the hazardous waste which was generated in the State was disposed of out of the State.

ASSEMBLYMAN LESNIAK: How much?

MR. SMITH: About 3.3 billion pounds.

ASSEMBLYMAN LESNIAK: Can you reduce that to tons?

MR. SMITH: I guess around 50,000 tons. Something like that.

ASSEMBLYMAN LESNIAK: Around 50,000 tons?

MR. SMITH: I think so.

ASSEMBLYMAN LESNIAK: Around 50,000 tons was disposed of outside of the State of New Jersey?

MR. SMITH: It was generated in the State and about the same amount was generated out of State and disposed of in the State.

ASSEMBLYMAN LESNIAK: So, by putting the tax on the disposal sites, we are basically raising the same amount of money as if the tax had been on the generators, except that it is raised in a different way. Those generators who dispose of their materials out of the State of New Jersey will not have to pay the tax. Those generators outside of the State of New Jersey who bring their waste into New Jersey will have to pay their tax, is that correct?

MR. SMITH: Yes.

ASSEMBLYMAN LESNIAK: Therefore, an added effect of this tax will be to encourage out-of-state disposal and discourage in-state disposal. I happen to think is a benefit to the State of New Jersey. I don't know how Pennsylvania and New York are going to feel about that, though.

In addition, the legislation will provide an appropriation up to \$500 thousand per year to continue the Department's participation in the inter-agency enforcement activities of the Federal and State governments concerning hazardous waste control. In addition, some funds, as may be requested by the Commissioner up to a limit of \$250 thousand per year, are appropriated under this legislation to cover the cost associated with the administration of the Environmental Cleanup Responsibility Act. It is expected that under those two programs, certainly not in terms of the enforcement for illegal disposal of hazardous waste, that we will cut back on the amount of money that we have to expend for cleanup if our criminal enforcement activities are better and that we hamper and inhibit the illegal disposal, thereby lessening the impact, the ultimate impact, upon the Fund.

At the same time, if the Environmental Cleanup Responsibility Act is implemented, we will ensure that those companies in the State of New Jersey which are closed down operations or which are transferring their assets will, under this legislation, be responsible for cleaning up their own sites. Therefore, some problems again that will be problems of the Fund will be alleviated because those companies will be responsible for the cleanup operations. We have had a whole series of problems, throughout the State of New Jersey, of companies packing up and leaving behind a dump that has been threatening the people, threatening our water supplies and forcing us to clean up their waste. That legislation will prevent that. And again, although it is a quarter of a million dollar appropriation from the Fund, it is expected to save an awful lot of money expenditures from the Fund because we will be requiring those companies to clean up their sites rather than the public.

Also, it will continue the \$250,000 appropriation to the Department of Health for the hazardous waste strike force team which was established under legislation which I sponsored last year.

So, in summary, basically, this legislation will raise in addition-- It also increases the cap for abandoned sites from \$1.5 million per site and \$3 million for the entire State, to \$3 million per site and \$50 million for the entire State. As you are aware, the cap did not inhibit the Department in terms of Chemical Control cleanup because of the eminent hazard definition under the Legislation. However, there may very well be many instances where \$1.5 million is insufficient if a site is not an eminent hazard and certainly where \$3 million would be insufficient for those types of sites throughout the State of New Jersey.

With that brief summary, we are going to take a ten minute recess because I see the audience is getting a little restless. When we come back, we will have the next witness. We will be back at ten after twelve.

(Recess)

AFTER RECESS

ASSEMBLYMAN LESNIAK: We are back. Let me say this before I call the first witness to testify. As those of you who are here in this room know, I am always open to your suggestions and accept many of them when they are valid and reject many of them even when they are valid, and reject most of the invalid ones and don't accept too many of the invalid ones. All of the legislation that I have ever introduced basically has undergone revision after revision because of comments from the industry, because of comments from the public, and because of comments from the Departments. The Legislation that the Assembly will be considering on the 30th, which was on the board for yesterday, regulating the solid and hazardous waste industry in terms of licensing procedure, has probably undergone at least eight revisions to my knowledge. The water bill, testing bill, which is now before the Senate, has probably undergone a dozen revisions. So, I know there are going to be considerable problems with this legislation. It was introduced to get the ball rolling, so to speak, because of the fact that we have been talking about revising and fine-tuning the Spill Fund for over a year now. Of course, the alternative is just to leave it as is. So, we also have to consider that. When we are talking about the options, the options are either this bill be revised or not revised, or leaving the tax as it is. I would just hope that everybody would keep that in mind when they are making their comments regarding this bill.

The first person to testify is Hal Bozarth from the Chemical Industry Council of New Jersey. Would you state your name, please?

H A L B O Z A R T H: Yes, Mr. Chairman, I will. My name is Hal Bozarth, and I represent the Chemical Industry Council of New Jersey, which is comprised of, as you know, approximately 70 members around the State.

ASSEMBLYMAN LESNIAK: You are against the bill?

MR. BOZARTH: First, Mr. Chairman, I would like to thank you for your initiative in this area. As you know, we have been talking about amendments to the Spill Fund for an awfully long time, and we appreciate your understanding of the fact that the existing fair market value tax has to go. It is neither fair nor equitable. The basic problem that you have pointed out and we have pointed out amongst other folks is that, it has no direct cause in an effective relationship between the problem of the abandoned sites and the taxing formula.

ASSEMBLYMAN LESNIAK: Who originally proposed the fair market value tax?

MR. BOZARTH: As you will remember, Mr. Chairman, that was an industry initiative which turned out to not raise the existing amount of money that you wanted it to raise. We apologize -- looking back, as everyone has done this morning, and hindsight always being 20-20 -- that the fair market value tax, which the chemical industry proposed three years ago, did not raise the money.

ASSEMBLYMAN LESNIAK: Who was skeptical about the fact that that would raise that amount of money?

MR. BOZARTH: If my memory serves me correctly, from what I have heard, Mr. Chairman, that you evidenced much concern at the time that we would not be able to raise that amount of money and we admit that it did not raise the correct amount of money. Again, as I said, we applaud your--

ASSEMBLYMAN LESNIAK: And because of that, the accelerator went into effect which really put a tremendous burden on those people paying into the tax.

MR. BOZARTH: To eight-tenths of a percent. That's right. And, I have given examples to this Committee many times of companies which have produced absolutely no hazardous waste and have a very onerous and burdensome tax placed on them under the fair market value system.

ASSEMBLYMAN LESNIAK: I understand I threw a monkey wrench into all of our deliberations by changing the tax from the generators to the disposal sites.

MR. BOZARTH: That's correct. Even though we haven't had a chance to comprehensively look at the whole bill, we can comment to you on the basic concept of changing that if you will call it a monkey wrench then. That is what it will be.

If you will tax at the disposal site, you do a couple of things. First of all, as part of your proposal, you are saying that those folks who generate in-state and transport waste out of state will be exempt from the tax.

ASSEMBLYMAN LESNIAK: Isn't that a good benefit?

MR. BOZARTH: Well, on the surface it would seem to be a very positive benefit. Again, it depends upon what your primary concern is. Are you worried about eliminating as much waste from the State, which is obviously a laudible idea, or, are you concerned about raising enough money to handle the abandoned site problem in New Jersey? If, as the folks that have preceded me have pointed out, that the problem is extremely large and that there are 200 to 300 sites which need a large expenditure of money, I will respectfully submit that for the reasons that I will now give, a disposal tax will eliminate from the tax base much of the material that you will be taxing at the disposal site and that will have an effect of not allowing you to raise the money that you want on a fair and equitable basis.

ASSEMBLYMAN LESNIAK: Is there any other way that we would be able to tax firms bringing hazardous waste into the State of New Jersey?

MR. BOZARTH: I can't see why you couldn't do that in addition to a generator tax.

ASSEMBLYMAN LESNIAK: The problem is something called the equal protection clause of the Constitution. If we just tax the waste into the State of New Jersey at the disposal site, and that is what it would have to be, can we tax, do you think--? Is it your opinion that we can tax waste brought into the State of New Jersey?

MR. BOZARTH: It is my opinion that the Court decision that you are alluding to in the solid waste situation said that you couldn't preclude waste from out of state coming into New Jersey. I don't believe it touched on the situation of whether or not you could tax waste. As you know, the landfill Closure and Continuancy Act and the Solid Waste Landfill tax does tax waste coming in from out-of-state.

ASSEMBLYMAN LESNIAK: So, we could tax it?

MR. BOZARTH: So it would seem to me that there would be no reason that you couldn't tax that waste. Again--

ASSEMBLYMAN LESNIAK: They have to file a manifest.

MR. BOZARTH: Certainly. Under record, they have to file one now, and it would be, although probably a complicated procedure to get the forms

going so that it would be easy for the Department to handle it, it would be something that is completely outside the realm of possibility. My basic point, however, is that if you look at a tax based on the number of people who generate waste and tax it at the point of generation, you do a couple of things which I think will get at your main problem or your main thrust of trying to limit the amount of hazardous waste that is disposed of and generated in the State.

First of all, if it is taxed at the point of generation, you bring in all of those up to 3,500 folks who are listed as manifest generators into the system.

ASSEMBLYMAN LESNIAK: Fifteen hundred?

MR. BOZARTH: Well, we met with Dave Leu and some of his people in the solid waste area yesterday, and he has informed us that it is possible that there is a realm of generators in the State between 1,050 and 3,000. It would seem to me that there are still folks out there who are not in the manifest.

ASSEMBLYMAN LESNIAK: They better be now.

MR. BOZARTH: They better be now, but again, it seems to be, in some quarters, an opinion that there are people who are not in the system.

ASSEMBLYMAN LESNIAK: They are violating the criminal law.

MR. BOZARTH: They are violating the criminal law.

ASSEMBLYMAN LESNIAK: Without any defenses. I mean, if they are supposed to be in there, they have to be in there.

MR. BOZARTH: That is correct. I think the Department has seen over the last two years an increase in the amount of waste entering the manifest system, and that would indicate that more and more people are becoming aware of the manifest system and the obvious laws that go along with it, and are entering the system. Again, it is easy to say that there are probably still more out there.

But again, a point of generation tax will bring in all of these people that are now in the manifest system who would not necessarily be in a disposal tax system. If you are bringing folks to not pay the tax by going out of state, you do a couple of things. It is an added burden to that company to have to ship its waste to Alabama in price. Obviously, it is not a fair cost. It is a competitive disadvantage that those companies in New Jersey will have to pay, that companies in Pennsylvania and other states don't have to pay, now. I understand your concern is to not

minimize the amount of employment that we could have in New Jersey, and you are not trying to force industry out. It is a fine line, and I understand that. But, by broadening the tax base at a point of generation, you have, in effect, broadened that so that you are not burdening any one segment.

ASSEMBLYMAN LESNIAK: We certainly do not want to solve the employment problems of the State of New Jersey by creating a thousand hazardous waste disposal sites and handle all of it for the United States.

MR. BOZARTH: Certainly not. But, we also don't want to make our tax system, I would respectfully suggest, so burdensome to the companies in the State that they will make decisions at a corporate level to when they increase their facility capacity to do it elsewhere, in Louisiana or Texas. I am sure you don't want to do that either. And, it is a fine line.

ASSEMBLYMAN LESNIAK: I don't know that we want to do that. I know we have to have adequate disposal facilities here. I also know that we do not want to be a magnet to attract waste from other states.

MR. BOZARTH: One of the things that you are aware of, Mr. Chairman, is under the old S-1300, Chapter 279, the Commission itself is now empowered to cite environmentally sound disposal facilities which will go a long way to, in the future, make sure that we don't end up with the situation we had 10, 20 years ago, and that is abandoned sites. I can say with all due candor that under the morass of regulations at both State and Federal level, that I doubt very seriously whether we will see that situation of abandoned sites happening in the future. RECRA, Resource Conservation Recovery Act requires extensive documentation of what goes on, where the waste goes, as does New Jersey's very stringent regulations. I don't think we are going to have this problem in perpetuity and I think what you are trying to get at is to do one thing, minimize generation and take care of the abandoned site problem. If you tax to the point of generation, you have a better feeling or you have a better chance of getting a company to change its process. It is costly, but, it is possible in some cases for companies to change their manufacturing process to limit amounts of hazardous waste which are

ASSEMBLYMAN LESNIAK: You would agree to exempting those wastes that are sent to recycling facilities, wouldn't you?
generated.

MR. BOZARTH: Well, I think that is the same kind of argument, that if there is a way to, in an environmentally sound fashion, deal with a portion of the hazardous waste strain, that we shouldn't give it a

disincentive by taking it, and that is exactly what you would do. If someone has waste and can recycle it--

ASSEMBLYMAN LESNIAK: Let's forget about the disposal aspect of it. Let's talk about if there were a tax on generation, okay?

MR. BOZARTH: Okay.

ASSEMBLYMAN LESNIAK: I don't want to get everybody against my bill. Almost everybody is bad enough. If there were a tax on generation, would you not want that waste that is recycled to be exempted from the tax?

MR. BOZARTH: Yes.

ASSEMBLYMAN LESNIAK: Any other exemptions?

MR. BOZARTH: Yes. We think we can make a strong argument for exempting those companies which have put, in some cases, up to \$40 million in capital expenditures into their own waste treatment facility and those companies are obviously large, they are few in number, so it is not going to have as deleterious an effect on the total base as you would think.

ASSEMBLYMAN LESNIAK: Don't they produce a large number in the amount of waste also?

MR. BOZARTH: They produce a significant share of the waste stream. But, the point is that they have taken it upon themselves, because of the size of those companies, to invest heavily in waste water treatment facilities and incinerators and sludge incinerators, the whole deal.

ASSEMBLYMAN LESNIAK: Because it is more economically efficient for them to do it that way.

MR. BOZARTH: That is correct. I am saying to you that it is really punishment for them to have gone ahead and invested all of that money and then tax them on top of it for doing something which is to the better of the State and to its citizens.

ASSEMBLYMAN LESNIAK: They didn't do it for the betterment of themselves?

MR. BOZARTH: Well, certainly they did, but I am saying they will be paying an additional tax. Everyone else in that system who has not done that capital expenditure will be paying a tax and you are saying, well, let's--

ASSEMBLYMAN LESNIAK: Aren't corporations guided by what we were in the economics, one called the profit motive, and that if it were more profitable for them not to have built that facility, they wouldn't have built it, and they would have had it done by someone else?

MR. BOZARTH: That is correct, Assemblyman. I suggest to you that the reason they built those facilities, in one case, was because they have eight other plants in the State of New Jersey from which they transport waste, which is hazardous, to their waste water treatment facility or incinerator for proper disposal. It probably saves them, in the long run, on things like transportation cost and constantly escalating disposal costs. So, to that point, you are correct. But again, if you follow the line of theory down, it also makes, at least in our view, little sense to tax them again for doing what is considered to be economically and also environmentally correct.

ASSEMBLYMAN LESNIAK: Yes, but they did it because it was economically beneficial to the corporation, not because it was of their general interest for the people of the State of New Jersey.

MR. BOZARTH: For whatever reason, they are in a situation now that they are five steps ahead of companies who have not done that. We are saying that it makes some sense to tax them in a less burdensome fashion because they have done that, regardless of motive.

ASSEMBLYMAN LESNIAK: I disagree with you on that. You win some and you lose some.

MR. BOZARTH: You can't win them all. Could I comment on other sections of the bill, Mr. Chairman?

ASSEMBLYMAN LESNIAK: Sure.

MR. BOZARTH: First of all, I think it is correct to say that approximately 70 companies that we have in members, we have calculated it out--

ASSEMBLYMAN LESNIAK: It has gone up 10 in the last week.

MR. BOZARTH: Thank you, Mr. Chairman. We usually go through this dialogue. We pay in excess of \$200 million in corporate business taxes alone. We also figure that just those 70 members of our association will pay in excess of, over the 5-year life of Federal Superfund, approximately \$175 million.

ASSEMBLYMAN LESNIAK: Don't blame me for Superfund.

MR. BOZARTH: I can't blame you for everything. But, we are only getting back, so we hear, much less than \$75 million. So, what is happening in New Jersey is, as you--

ASSEMBLYMAN LESNIAK: Clean up 90 sites that are going to be on the list.

MR. BOZARTH: That's right. I would say at a bare minimum we should get at least the equal amount back into New Jersey to help solve our problem than the New Jersey companies send out. It seems only fair that if you pay for something you ought to get full service for it.

ASSEMBLYMAN LESNIAK: I would suggest we take that up with our Congressional delegation, though.

MR. BOZARTH: We have, Mr. Chairman, and so far, because of many problems, we have been unable to get that commitment. We appreciate your concern and the Department's concern, in trying to get as much money back from Federal Superfund as we can. But again, the impact on what happens to New Jersey's industry, the chemical industry in particular, that is, on top of the corporate business tax and on top of Federal Superfund tax, the New Jersey Spill Compensation and Control Act tax is another tax. In effect, this is a tax which our State's industries have competitors that don't have to pay. It is something to keep in mind.

ASSEMBLYMAN LESNIAK: That tax is there now, Hal. That tax is there.

MR. BOZARTH: That is correct. You are saying that you want to increase that tax, and I am saying that it is something to consider, that again, we are taxing companies in New Jersey far in excess of what they are paying in, let's say Louisiana or Texas, where the chemical industry's prime competitors reside.

ASSEMBLYMAN LESNIAK: And you know what serious problems they have in Louisiana and Texas, regarding chemical dump sites?

MR. BOZARTH: I have heard and read recently that Louisiana is now undergoing a comprehensive evaluation of what their problem is.

ASSEMBLYMAN LESNIAK: Which is what we have been doing over the last three years.

MR. BOZARTH: That's correct.

ASSEMBLYMAN LESNIAK: I would suspect that companies in Louisiana are soon going to have to bite the bullet just as your companies had to three years ago.

MR. BOZARTH: I would assume that sooner or later, that is a very good possibility. When you raise the amount of taxes under this new taxing formula to cover the abandoned site problem and help clean up in addition to the Federal Superfund, there is another thing that you have to keep in mind, and that is that at some point in time, hopefully, we will be able to spend

some of the \$100 million dollars in the Bond Act which was passed by the voters last November. Again, their understanding obviously was that that money would go to clean up sites. To my recollection, there has not been penny one spent at any New Jersey site out of that \$100 million. Couple it all together and you can see that we are sitting with a lot of money, we keep taxing the industries in the State that puts them in a competitive disadvantage and the problem continues.

ASSEMBLYMAN LESNIAK: What type of bill would you support?

MR. BOZARTH: Right now we could support, in concept, Mr. Chairman, a bill predicated on the manifest system taxed at the point of generation for all of the folks in the State of New Jersey who generate a hazardous waste.

ASSEMBLYMAN LESNIAK: Or outside of New Jersey?

MR. BOZARTH: Or outside of New Jersey. That is correct. We have to say as a caveat that we would need the recycling exemption and we would hope that the full Committee would give full hearing to the off-site company-owned exemption that I have delineated a few minutes ago. I think that is an extremely important point.

ASSEMBLYMAN LESNIAK: How do we frame a tax to get the generators outside of the State that brings it in? Do they have to file with the State?

MR. STANTON: Any company that brings a waste into New Jersey to be disposed of has to have a New Jersey manifest or a manifest in the State in which it is generated that is approved by New Jersey, or the licensed hazardous waste facility cannot accept it.

ASSEMBLYMAN LESNIAK: So, we could tax those companies.

MR. BOZARTH: You could tax them. You must understand, however, that will be a large disincentive for companies to utilize New Jersey disposal facilities. You may say that it is a positive point.

ASSEMBLYMAN LESNIAK: You can't have everything.

MR. BOZARTH: You may say that it is a positive point. I am sure there are other folks in the State who run those facilities who would find it as a large disincentive. For instance, the facility in South Jersey--

ASSEMBLYMAN LESNIAK: You don't want XYZ Corporation in Pennsylvania, if they bring the waste into New Jersey for disposal, to pay the same tax that ABC Corporation in New Jersey is paying?

MR. BOZARTH: No. I am not saying that. All I am saying is, in a way, to point out to you that there are ramifications of whatever tax situation we impose upon the industry.

ASSEMBLYMAN LESNIAK: Don't you think that XYZ Corporation in Pennsylvania, or wherever, should pay the same tax that ABC Corporation in New Jersey is paying?

MR. BOZARTH: I agree.

ASSEMBLYMAN LESNIAK: Thank you.

MR. BOZARTH: And I think if you look at what is in the manifest system now, there is a broad enough base there to be taxed at a rate which will be equitable and raise the needed money to address the abandoned site problem.

ASSEMBLYMAN LESNIAK: And therefore, your only problem would be the inclusion of on-site and/or off-site disposal facilities owned and operated by the corporations that generate the waste.

MR. BOZARTH: That is the off-site company-owned disposer exemption, yes. I would say I have a problem with that.

I also have some other problems about how the money is being spent. I believe that the New Jersey Treasurer promulgated regulations on January 3rd which said specifically how that money must be spent, and I believe that was in a direct outgrowth of the settlement in court on the preemption issue. I would suggest, again, respectfully, that you look at your expenditure list in the bill which is now before us to see whether or not those expenditures can fit within the delineated examples of possible expenditures and appropriate expenditures that the Treasurer has established. I would suggest to you--

ASSEMBLYMAN LESNIAK: I am not bound by that settlement.

MR. BOZARTH: Okay. I am aware of you making that point. I would suggest to you that if you look at the National Contingency Plan under Federal Superfund, many of the things which you are, and probably rightfully trying to do in the vehicle of this bill, will be done under the NCP.

ASSEMBLYMAN LESNIAK: Next century?

MR. BOZARTH: Well, it is law now. I can't vouch for the compliance schedule of the President of Administration in Washington, but I will say that there is law there and I would suggest that since we have to make sure that we comply with all of our State tax laws, that the Federal government, within a short span of time, will be addressing itself, as they are in preliminary evaluations of what the NCP calls for and what they are going to do. I would suggest that on a national level, the kinds of things that the National Contingency Plan will do, will do it in such a way that it is more inclusive than New Jersey could do and there will be more benefit.

I am suggesting that the monies that you have put aside, for instance, for the clinics that you have proposed, may not be the best expenditure of money. Even though you have decreased the amount of money that you will spend in some of those areas in this bill, it would seem to me that you are still approaching a million dollars or more in non-cleanup related costs. I would suggest that there are some folks in the State who think that other abandoned sites should be cleaned up before clinics are placed around the State. It has been our experience, at least, we have no evidence to the contrary, that there exists a sizable problem out there that needs to be addressed. If that were true, companies would be inundated, for instance, with lawsuits. And, that is an avenue that is open to them. As yet, I know of no lawsuits of anyone filed in the State of New Jersey against the generator or disposer for the kinds of things that you are looking for in evaluating people's health problems.

ASSEMBLYMAN LESNIAK: I don't want to get into the problems of bringing civil remedies and probable cause and those sort of proof problems. Basically what you are saying, Hal, is that a person who lives in relocated Bay Way could sue one of your corporations if they got sick and then they could bring their medical experts in and bring in their chemical experts and say, I am sure, they will have \$50,000 available to them for all of this expert and technical testimony and you know that it would cost to prove that relationship. I don't think you want to put that burden on that, and I think that is not a valid point, quite frankly. I don't want to confuse the issue, so, let's talk about something else.

MR. BOZARTH: Okay. Let's talk about something else. On the second section of the tax to raise \$2.5 million, as it stands in the vehicle bill now, you are indicating that the Division of Taxation Director would set a rate--

ASSEMBLYMAN LESNIAK: You don't like that?

MR. BOZARTH: I don't like that. First of all, I think it is--

ASSEMBLYMAN LESNIAK: Can you give me some valid figures? You couldn't three years ago. Can you give them to me now?

MR. BOZARTH: That is why I paused. We are in a position where we are bound and determined not to give you anything but the most accurate figures. And at this table today, because Taxation has those best figures, I can tell you what an equitable tax rate would be. But, I can suggest to you that it seems to me, in reading the Constitution of the State of New Jersey,

that the Assembly is the only body empowered to set tax rates. It would seem to me that there is an easy way, once we have figures, to establish the amount of money that needs to be raised or the rate of the tax that needs to raise \$2.5 million. But very conceptually, I have a large problem with letting the Division of Taxation Director do that. I think you are in a much better position, at least as good a position as he is, once we have those facts and figures, to establish a fair tax.

ASSEMBLYMAN LESNIAK: It hasn't been the case in the past, though.

MR. BOZARTH: That is true, but then I think we ought to seek remedy from that situation and get those facts.

ASSEMBLYMAN LESNIAK: As a matter of fact, you weren't around at that time, but I was told and my Senator was told that the corporation right here in my district would be paying \$2.5 million of the Spill Fund tax. It turned out it was barely a quarter of a million dollars.

MR. BOZARTH: That is correct, Mr. Chairman. It was erroneous.

ASSEMBLYMAN LESNIAK: Okay. I think we are going to be looking at many of the issues that you raised. We have been looking at it, and the bill will be on the next Committee agenda. I seriously doubt that it will be in a position to be released at that time. However, we will be undergoing substantial revisions as we always do.

MR. BOZARTH: If I may, Mr. Chairman, I would like to raise an issue that is not addressed in the bill. That is the issue of liability. There is a large problem existing under the Federal Superfund, as to what the type of liability exists for companies who are found to have materials in an abandoned site. Some people have indicated that they perceive Superfund liability to be joint, severe, and strict, indicating that no matter what portion or proportion of waste that you have on an abandoned site, you can be charged with the total cleanup for that site. Again, regardless of how much--

ASSEMBLYMAN LESNIAK: That is the same standard under the Spill Fund.

MR. BOZARTH: Well again, there are different interpretations under New Jersey Spill Fund, and I would suggest that it is an issue which could be addressed through this vehicle, and I would like to suggest conceptually that you consider a liability section which would embrace the concept of proportionability in liability. In other words, if I am Company "A" and I am found to have 10% of waste material in an abandoned site, then I should be

limited as to my liability to pay for cleanup of that site to 10%. It is unfair for me if--

ASSEMBLYMAN LESNIAK: How do you prove that the 10% is 10% of the cleanup cost? That is a problem.

MR. BOZARTH: All right. That is a problem, but the basic concept is one that is sound, I believe. Frankly, let's say you have a site, 100%, and we can identify generators that produced 10% of the material. It is unfair to go after that company with 10% for the total cleanup. It just isn't fair. They shouldn't do that, and that is where the Spill Fund should step in and pay for the remaining part of that cleanup. We would hate to get in a position where because a company can be identified as having some drums in an abandoned site, that it is attacked by Treasury to pay for the total cleanup. And, we are saying that is a possibility, and we suggest that you look at that issue when you redraft this legislation, with an eye toward proportionate liability.

ASSEMBLYMAN LESNIAK: We will look at that issue, and I would like to get together with you and the petroleum industry and the Attorney General's office to discuss that further.

MR. BOZARTH: I believe when Assistant Commissioner Tyler speaks this morning, he will give you somewhat different figures.

ASSEMBLYMAN LESNIAK: He has gone.

MR. BOZARTH: He's gone? Some of the different figures, I think, are instructive for you to have. Yesterday, a few of us spent some time with David Leu who is the Bureau Chief of, in effect, the manifest system, and we received some figures from him which, as I said, are different, and if they are not going to give those figures, I would be glad to give them to you.

ASSEMBLYMAN LESNIAK: Could you please give them to me, for the record?

MR. BOZARTH: It is my understanding that -- this is in pounds and fairly easy to convert -- there are 1.6 billion pounds of hazardous waste in the manifest system generated by New Jersey companies and disposed of in the state. There are 600 million pounds generated out of state coming into New Jersey for disposal and there are approximately 500 million pounds generated in-state going out of state, which in effect, you almost have a wash there.

ASSEMBLYMAN LESNIAK: Does that include waste cleanup operations?

MR. BOZARTH: These are 1981 figures, and they will include much less waste cleanup operations that did the 1980 figures, which was--

ASSEMBLYMAN LESNIAK: But it does. The answer to that question is yes, right?

MR. STANTON: Yes. Hazardous waste being cleaned up has to be manifested just as would a waste that came from--

ASSEMBLYMAN LESNIAK: And that is manifested by the State of New Jersey. We certainly cannot tax the State to pay the State, though. So, we cannot base our figures. We would have to net out the amount. Do we have the amount available to us that is manifested by the State? I am sure that is available to us.

MR. SMITH: We are talking 1.6 billion pounds.

MR. BOZARTH: That is approximately 800,000 tons.

MR. SMITH: Yes, I know. That includes the State's generation?

ASSEMBLYMAN LESNIAK: Yes, I believe so.

MR. LEU: May I speak?

ASSEMBLYMAN LESNIAK: Yes.

MR. LEU: The 1.6 billion pounds disposed of in-state -- which can be broken down following approximately a billion pounds, a little bit less here, figure for 950 million generated in-state and disposed of in-state -- is a reasonable figure, approximately a billion pounds for that. Six hundred million pounds are generated out of State and come into State. So, if you take that one billion plus that 600, there is your 1.6 billion that are disposed of in-state. Five hundred million pounds are generated in-state and shipped out of state.

ASSEMBLYMAN LESNIAK: We know all of that. The question was, how much of that is the State of New Jersey's cleanup operations, because we can't tax the State of New Jersey?

MR. LEU: The 1.6 is primarily devoid of that aspect.

ASSEMBLYMAN LESNIAK: Okay. That is what we were trying to determine.

MR. BOZARTH: Can I make two other small points, Mr. Chairman?

ASSEMBLYMAN LESNIAK: Yes.

MR. BOZARTH: We would suggest that in this bill, as finally drafted, there be language to conform New Jersey's cleanup operations to the National Contingency Plan in CERCLA. That will, in effect, allow us to get out of the time consuming and money consuming apparatus of figuring out how to prioritize sites, how to clean them up, and what to do on a site. That is all going to be given to us under CERCLA, Federal Superfund. I would suggest

conformancy language in this bill which would allow us to utilize all of the man-hours and expertise that have gone into the Federal level on that.

ASSEMBLYMAN LESNIAK: I would prefer to handle that under separate legislation.

MR. BOZARTH: Okay. Might I suggest that similar to what Federal Superfund does--?

ASSEMBLYMAN LESNIAK: I don't want to mix fiscal and programmatic things together. I just don't think it goes.

MR. BOZARTH: Okay. We would like to see some kind of sunset provision in this Act, because I think what that will do, as it is done with Federal Superfund, is that it allows us to take a look at the total program and what has happened, at some time in the future.

ASSEMBLYMAN LESNIAK: What type of sunset provision are you speaking about?

MR. BOZARTH: Federal Superfund has five years, Mr. Chairman.

ASSEMBLYMAN LESNIAK: The tax just expires.

MR. BOZARTH: That's right. To be reauthorized again, I am quite sure.

ASSEMBLYMAN LESNIAK: I am quite sure. I hope.

I would prefer something not as drastic as that. Do you understand what I am saying?

MR. BOZARTH: Yes.

ASSEMBLYMAN LESNIAK: I would like us to review this on a formal basis, as we are doing now, informally. We could have just taken this and let it go. I am sure there are many people who are quite content with the way the tax is raised right now, both in the Department and in the Legislature, and in the industry and we have no particular timetable upon which to do this. We could not do it. I am thinking in terms of a review mandated under law. I don't envision a particular point in time where there would be a definite cutoff only to be reauthorized on the law, because quiter frankly, I don't see the light at the end of the tunnel. If we could see that, then we could say it. I would prefer some formal mechanism for reconsideration and review at this stage.

MR. BOZARTH: I had one other point. We think it is too early to say that the total revenue of \$50 million in the Fund is a good figure. We suggest a somewhat lower figure. That is an awful lot of money. We have a large concern directly related to that.

ASSEMBLYMAN LESNIAK: You mean before it is cut off?

MR. BOZARTH: Yes.

ASSEMBLYMAN LESNIAK: You are never going to get there.

MR. BOZARTH: I'm just giving you are basic concerns.

ASSEMBLYMAN LESNIAK: Okay.

MR. BOZARTH: With all due respect to everyone who has gone before me this morning, we, in the chemical industry, have a large amount of concern with the way monies have been spent. The Attorney General and the Spill Fund Administrator both have indicated -- as has Commissioner Hughey -- that things will now be done in a different fashion. We applaud that, but we think that we have seen too much money being spent at sites where they may or may not have needed that much money. We would like a language as tight as can possibly be drawn in the bill to make sure that we don't have a repeat of the Chemical Control situation, where someone who was quoted from the Department in this morning's paper as saying, "Our object is to bankrupt the Spill Fund." In other words, spend as much as you want. We have a large problem with that. We, as the taxpayers in this Fund, demand fiscal accountability. We demand cost accounting mechanisms established by law that will make sure that we are not letting, for instance, equipment sit for days on end not being used, and paying premium rates. We suggest the language be inserted in the bill to make sure that any equipment purchased will first have to undergo scrutiny as to what companies in the area have that existing equipment, whether or not it is available for short-term, and to make sure that we don't have an incentive to spend more money than is absolutely necessary to do a cost-effective job of cleaning up these sites. No one is saying that the money is not needed. Our position is that we want to make sure every possible dollar that we pay in taxes goes to the purpose in which the Act was originally proposed in an act.

ASSEMBLYMAN LESNIAK: I totally agree with you. I think that ought to be included in A-1455, something close to that. The Task Force bill, 1255. I really do not want to mix the fiscal aspects with the programmatic aspects and I think it is much more appropriately handled in that legislation. I would agree with you totally.

MR. BOZARTH: There has been a large problem with that. We have been saying these things year after year and we are seeing now the fruits of a system that really wasn't a system. We would really like to see as much as possibly can be done, and we commend the new Administration.

ASSEMBLYMAN LESNIAK: What are your comments regarding prior testimony? Do you have any? I have the reports right here, before me. I know you haven't had an opportunity to review them. I am sure that you will review them and when we have our joint Committee hearings, be more prepared to comment.

MR. BOZARTH: We will be glad to give you comprehensive thoughts on those reports at that time, but I can tell you, it makes us feel extremely good to see that the State is now trying to ensure the fiscal viability of the Fund to make sure that those monies can be spent appropriately. Obviously, the various audits in the Attorney General's report point out problems that have existed in the past for one reason or another that needed to be corrected. I am glad to see that the Department is starting in that direction in correcting those problems.

ASSEMBLYMAN LESNIAK: The initial legislation involving these programs was in the auditing legislation which we passed earlier this year.

MR. BOZARTH: And we supported that wholeheartedly.

ASSEMBLYMAN LESNIAK: It was your idea.

MR. BOZARTH: It was something that was long needed. We would like to thank you for the opportunity to comment on this proposal this morning. We recommend that reevaluate the thinking of the disposal tax versus our suggestion of a generator tax, which we feel if you also tax out-of-state waste coming in, it will very probably be a much more equitable way to guarantee that you will have the money that is needed if that is the amount that you need to raise, and that it will not be overly burdensome on the companies in the State of New Jersey. We commend you for -- in concept at least -- trying to right a past wrong. Again, hindsight always being 20-20, and I have been culpable for that fair market value tax. I am willing to take the blame for that and I am glad that we are working together to change an obvious mistake to the benefit of us all. Thank you.

ASSEMBLYMAN LESNIAK: Thank you, Hal. Frank Brill is our next witness. Frank?

MR. BRILL: I am not going to testify.

ASSEMBLYMAN LESNIAK: You are not going to testify? You are passing?

MR. BRILL: I am passing.

ASSEMBLYMAN LESNIAK: Okay. Then we will hear from James Benton, New Jersey Petroleum Council.

J A M E S B E N T O N: Thank you, Mr. Chairman. My name is--

ASSEMBLYMAN LESNIAK: If I may, just as a preliminary matter, if I understand your position--

MR. BENTON: Preliminarily before my name? My name is James Benton. I am the Associate Director of the New Jersey Petroleum Council.

ASSEMBLYMAN LESNIAK: Okay. Thank you. If I understand your position, it is you would like to see the funds split, correct?

MR. BENTON: I don't know that that is necessarily a condition of what we are about to testify towards.

ASSEMBLYMAN LESNIAK: The reason I asked is because I was going to ask you, assuming arguendo, as we say, that the Fund stays not split, what would your comments be regarding this legislation?

MR. BENTON: The legislation as drafted does not split the funds.

ASSEMBLYMAN LESNIAK: Right.

MR. BENTON: My comments address that particular situation.

Mr. Chairman and members of the Committee, you have asked for comments today on the proposed changes in the New Jersey Spill Fund, and we are glad to participate, as you said, Mr. Chairman, to get the ball rolling. We feel it has been a subject long due for the proper review, not only by the Legislature, but by the Administration and the industry.

What I have today is a very brief synopsis of what our comments are regarding the present operation of the Spill Fund, where we think the Fund ought to be moving as far as legislative directions, and, if you will accord me the same opportunity as the earlier witness, I will very briefly address some of the comments that were made here today.

Let me just open by suggesting that we really haven't had a great deal of time, nor has anyone else, to review this bill, and we hope that there will be some additional opportunity to offer further comments which we can develop for you.

We represent the major oil companies in New Jersey, who have, as far as history of this, paid the bulk of monies and many millions of dollars into the Spill Fund since its inception, with most of the money being and being spent for the incidents that are caused by others. Because of the time limitations today, we will try to just highlight some of the economic and current news that would be of interest to this Committee in considering this legislation. To put it succinctly, we feel that the proposed legislation today pays little or no attention to the legitimate concerns of our industry,

which is the Spill Fund's principal taxpayer. What it does, in fact, is actually increase the already unfair burden on our companies.

ASSEMBLYMAN LESNIAK: How does it do that?

MR. BENTON: Mr. Chairman, very briefly, not only would we, the petroleum industry in New Jersey, be expected to continue to pay our penny a barrel rate into the Spill Fund, as we read this legislation, but we would also be subject now to a tax on waste disposed as other companies would in New Jersey also. We would already be carrying that burden. Somehow that does not mesh with the current economic news, particularly as pertaining to our refiners which again, pay the bulk of the penny a barrel tax in New Jersey. Let me just briefly review it, as you did at the onset, Mr. Chairman, the history of the Spill Fund.

It was initially created as a concept because of the drilling off our New Jersey coast, the exploration and the drilling. This concept translated and subsequently amended, has subjected the major oil companies and refiners to a transfer tax on petroleum in New Jersey. This tax, which was designed and did meet revenue estimates of \$7 million annually, would have terminated long ago had not this fund been used to correct incidents and cleanup costs created by others. The record is well documented and the experience has been, in the most recent report, that only \$26,000 or less than one-tenth of one percent of the fund has been spent on petroleum-related spills, while the revenue continued to come from the petroleum industry in New Jersey. A similar situation has prevailed throughout the entire history of the fund. Ironically, at the present date, there is no drilling taking place offshore.

ASSEMBLYMAN LESNIAK: Just a preliminary matter again. How many pounds of hazardous waste is generated by petroleum companies? Do you know?

MR. BENTON: Mr. Chairman, I don't really have accurate figures on those to date. Because of the time considerations and constraints involved, we are in the process of petitioning those industries that are here in New Jersey that may generate that waste and try to get a handle on exactly what that might be.

ASSEMBLYMAN LESNIAK: Okay. But right now, you have absolutely no idea. It could be a very small amount or it could be a significant amount.

MR. BENTON: I have no general comments that I would make as to it being small or large. The point being, that tax would impact on the refineries and on the producers of hazardous waste if they happen to be oil companies, the same as it would any other company in the State.

ASSEMBLYMAN LESNIAK: But it is important for me to know whether that is insignificant or significant, at least.

MR. COLBURN: Mr. Chairman, I can tell you in our particular case, that surpasses some 6,000 tons a year.

ASSEMBLYMAN LESNIAK: Six thousand tons?

MR. BENTON: The gentleman speaking is Carl Colburn of Chevron's Refinery in Perth Amboy.

ASSEMBLYMAN LESNIAK: Generated and disposed?

MR. COLBURN: Yes, sir.

ASSEMBLYMAN LESNIAK: I am sorry for interrupting, Jim, but this is an important point at this stage.

MR. BENTON: Mr. Chairman, respectfully, Carl Colburn answers for Chevron as he is employed by; we also have, obviously, the Bay Way Refinery, Exxon at Linden, we have the two refineries, Texaco and--

ASSEMBLYMAN LESNIAK: But you don't have the figures for me, Jim?

MR. BENTON: I don't have the figure right now.

ASSEMBLYMAN LESNIAK: If I can get the figures that I need right now, at this stage, at least to give me some indication of what we are talking about, it would be extremely helpful.

MR. BENTON: Okay. We will try to get those figures to you, Mr. Chairman. I don't know that we can give you a representative estimate right off the top.

ASSEMBLYMAN LESNIAK: All right. Let's move away from some figures. Let's talk about qualitative matters. What type of hazardous waste is generated by a petroleum operation, and disposed of?

MR. BENTON: Again, speaking very generally, Mr. Chairman, they are the type of high-volume, low-toxic type of wastes that are generated by the refineries in New Jersey. They are the oily sludges and they are the by-products which can no longer be used from a refinery process. But generally, they are high in volume, very high weight, so therefore, if you are talking about a tax on a per ton basis, they would contain a lot of weight, but, on the other hand, they are very relative to the scale of hazardous substances, of very low toxicity.

ASSEMBLYMAN LESNIAK: What is done with those substances? How are they handled? Are they recycled? Are they disposed of? Do you know?

MR. BENTON: Sometimes they are disposed of and other times, but infrequently, they can be recycled. See, the very nature of the petroleum

refinery industry is that they take the oil from the ground and try to refine it. Because of the expense involved, great lengths have been gone to try to get every last drop of usable substance out of that--

ASSEMBLYMAN LESNIAK: Let me tell you right now, this is the reason for my line of questioning and why I interrupted you. It is not the intent of this legislation to raise additional monies from the petroleum industry.

MR. BENTON: Fine. I accept that. Again, we are willing to work with you on that point.

ASSEMBLYMAN LESNIAK: Okay.

MR. BENTON: But understand that based on our reading of this, we do feel that there are additional burdens imposed on the industry which we would be willing to address with you.

ASSEMBLYMAN LESNIAK: As I said, this is going to undergo revisions as any legislation, particularly legislation that I have been involved in, because I found it very helpful to get views from the industry and the public. Again, just let me repeat. It is not my intent to raise any additional monies from the petroleum industry under this legislation.

MR. BENTON: Fine. Recently, the refining industry in New Jersey, as you are no doubt aware, Mr. Chairman, being a resident of Union County, has suffered a serious blow when two of the major refiners, Exxon at Bay Way in Linden, and Chevron at Perth Amboy, announced curtailments of their respective refineries. Exxon announced a cutback from 265,000 barrels a day to 100,000 barrels a day, and Chevron announced a reduction from approximately 125,000 to 88,000. Among reasons cited were economic and marketplace conditions and the ability to compete viably with the excess crude capacity resulting from shrinking markets and changing patterns. The U.S. Department of Energy in viewing the national situation, noted 500,000 of half a million barrels a day of capacity had closed since 1981 and early 1982. This deal, we figure, does not note the one million barrels a day of capacity that has mothballed or shut down for a determined period of time. The point being, refinery is not only subject to internal profitability tests, but it must also compete against international refiners. The point is simple.

The New Jersey refiners, Exxon, Chevron, Texaco, Mobil, as well as the proposed reopening of the Hess facility at Port Reading, cannot bear the internal and external competitive practices and be expected to remain viable. This coupled with -- again, repeating, Mr. Chairman -- the Spill

Fund tax, and the manifest tax may be the last push that is needed for these operations to remain competitive.

For the record, I would like to introduce to you a listing of those refineries in the nation that have closed or mothballed operations. You will see, there are approximately 72 of them in the nation. The point being that refineries, which do make up a large part of the penny a barrel payments, are, in fact, an endangered species in the northeast. I know you, as a legislator, and many other legislators, often look for ways of implementing what they call an early-warning type task force. Mr. Chairman, respectfully, not because of the Spill Fund, but perhaps moving off of that subject a little bit, not because of the Spill Fund only, refineries, particularly in the northeast, are endangered species, and I think that point should be underscored at this.

Let me also point out ways that the Committee should be aware that the oil industry, despite its good experience, is protecting not only the citizens of New Jersey, but the citizens of Delaware and Pennsylvania. New Jersey is also informing co-ops, joint ventures, or co-ops to assure prompt and efficient response in the event there is a major spill. Large sums of money have been spent to equip these cooperatives with specialized vessels and other containment and removal equipment and full-time professional direction. They are the first line of defense, even before a lot of governmental agencies would get involved, in the event of a major accident. Such an organization exists right here in the New York/New Jersey harbor, and another one exists down in the Delaware Bay. The formation of these co-ops, in response, have been accelerated in recent years with the advent of the offshore drilling possibilities and the increase in oil tanker traffic. Yet, the Spill Fund does not recognize this industry's effort at all.

Testimony before Congress from New Jersey's DEP Director of Hazardous Management, perhaps, best sums up our case for a reduced fund or one that does have some definitive time and industry practiced cap to it. He testified at that time, and again this is New Jersey's DEP Director of Hazardous Management, that "The oil companies understand the strict liability provisions in the State laws." We find that where we can connect a spill with a particular company, it is invariably the company that cleans it up at its own expense. Oil companies are readily and easily identified. "In the cases where the discharge is unknown, or times that multiple parties are involved" -- I am still quoting directly from his testimony before Congress

-- "the quantities and cleanups are usually small. Third-party claims covered under State law but not yet under Federal law" -- at least at the time of his testimony -- "have been minuscule and much less than \$1 million since April of 1977." That is the end of his direct quote.

We submit, on behalf of the Petroleum Council, a sharply reduced cap on the product tax of the oil spill fund, it is appropriate. Furthermore, such money should be allowed to accrue for the purposes for which they were designed and that is an oil spill, the advent of an oil spill. Failure to address this issue and others may result in a further casualty in our New Jersey petroleum refining and New Jersey petroleum industry.

ASSEMBLYMAN LESNIAK: What is the total? Well, first of all, let me ask you a question regarding oil spills. The example of an underground gasoline tank leaking, where we know we have hundreds of these every day, probably leaking into the earth and getting into our water supplies. Somewhere down the road, some miles away in a water supply, it is detected that there is benzene. No one has any idea, not that they have any idea, but they can't prove that that benzene came from an oil leak. Yet, that leak may involve a very costly expenditure in terms of the public replacing their water supply. This is a specific example. Yet, that is not particularly identified as an oil spill because it is a by-product and it is virtually impossible to trace it down to a particular source. Don't you think the oil industry is somewhat responsible for those problems, too?

MR. BENTON: Mr. Chairman, respectfully, no more than any other abandoned site could be traced to a particular company, or anything. But, let me just address very briefly the legitimate concern that you have raised.

ASSEMBLYMAN LESNIAK: I agree with that answer.

MR. BENTON: We have testified before your Committee, the Associate Director -- his name is Oliver Papps -- on the situation of leaking gasoline tanks or the alleged leaking gasoline storage tanks.

ASSEMBLYMAN LESNIAK: It is not alleged, it is admitted.

MR. BENTON: Well, it happens. I'm not here to deny that it doesn't happen. But to say generally, that they all are out there and they all presume to be leaking is--

ASSEMBLYMAN LESNIAK: I didn't say all of them, I said there are hundreds right this very day in the State of New Jersey that are leaking.

MR. BENTON: And there are legitimate ways of identifying those tanks that are leaking. You heard voluminous testimony on that very point that day.

One of the best ways for determining whether or not a tank is, perhaps leaking, is a simple practice of inventory control. We are not here to debate whether inventory control is the issue on the table today. We respectfully suggest that that is the simplest and easiest way. But in examples where there is a tank leaking, there is no reason why that could not be identified and stringent procedures are required to, in fact, clean that up immediately -- usually at the company's own expense. It is usually something that is readily identifiable and can be traced.

ASSEMBLYMAN LESNIAK: I would submit that it is not as readily identifiable and hasn't been in the past. It is not as simple a problem as I think you make it, Jim.

MR. BENTON: I'm not intending to make it a simple problem, believe me. That type of leaking gasoline is not only a concern environmentally, but is an economic concern too. Nobody wants to lose that type of gasoline, if it happens to be gasoline, or any other substance that is stored that is still perhaps a marketable substance.

Let me briefly talk about the -- unless, Mr. Chairman, you have any other--

ASSEMBLYMAN LESNIAK: Yes. I had another point to make.

MR. BENTON: I'm sorry.

ASSEMBLYMAN LESNIAK: But I forgot what it was.

MR. BENTON: Okay. Well, until you remember, let me proceed.

ASSEMBLYMAN LESNIAK: I'm sure it will come back to me.

MR. BENTON: Instead, we viewed very generally-- This legislation calls on the petroleum industry to make a payment into a fund, again, similar to all other industries, that taxes the disposal of hazardous waste. Mr. Chairman, we agree that this obviously is an incorrect approach from an economic perspective as far as the petroleum industry is concerned. We feel generally at the outset, although we are willing to listen to continue discussion on this, that the tax should be levied on the generators and that again goes back to your economics 101, which you mentioned earlier, first economics course, and that is the ability to control one's own tax payment. By placing that on the generators, you are allowing them to, in effect, control the volume of hazardous waste that they produce.

ASSEMBLYMAN LESNIAK: But they can control it in two ways. They can control it by reducing the amount of waste they generate, which is laudible and cuts down on the tax burden.

MR. BENTON: Right.

ASSEMBLYMAN LESNIAK: The other way is by disposing of it illegally, which is not laudible, but it still cuts down on the tax burden. So, it cuts both ways and that is a problem that we are confronted with.

MR. BENTON: Absolutely. We are still willing participants in that type of discussion. But generally, our immediate reaction from Friday at 1:00, when we received this bill, to right now, is that the manifest tax does properly belong on the generator.

As proposed, the bill establishes a \$2.5 million fund for hazardous substance at a rate to be determined by the Director of Taxation. This practice must be viewed as unwise and perhaps questionable in legality, and it would certainly be interesting to hear if the Division of Taxation, the Director of Taxation would favor that type of tax.

ASSEMBLYMAN LESNIAK: Not as unwise as what happened a couple of years ago -- you weren't a part of this -- as being flimflammed by industry representatives with false figures which resulted in lower tax being raised. I'm sorry to hit you with that, because you weren't part of it.

MR. BENTON: No. Well, Mr. Chairman, let me respectfully unveil myself. Perhaps before your time, I formerly occupied the seat that my counterpart, Mr. Bozarth, had. As a matter of fact -- perhaps not openly, but I certainly couldn't shirk my responsibility. I was also at that meeting that took place, where industry did initially suggest that type of fair market value tax.

ASSEMBLYMAN LESNIAK: Not only that, but also blatant false testimony was given before the Senate Appropriations Committee concerning the amount of tax to be raised under my legislation. I was accused of at that time, by an industry right here in my own district, of leveling a tax that was going to cost them actually one-tenth of what they testified to. They certainly have the knowledge and the expertise to not make a 1,000% error - certainly more knowledge and at least more expertise and more knowledge about their industry than I.

So therefore, this levy was in response to a real situation with regard to accurate figures. And, if we can get accurate figures in this regard, I certainly would revise that method.

MR. BENTON: We would extend to you our best cooperation in making sure that that in fact does not transpire again, that three years from now we are not sitting in this room wringing our hands over mistakes that we might have made. But, the positive aspect of that \$2.5 million tax is that it appears to be an appropriate level for a production tax, and we submit that the oil industry tax ought to be fairly close to a similar level of about \$2.5 million. Again, Mr. Chairman, we are paying into the waste tax and we also might be expected to bear that similar production tax because that essentially is what it amounts to. I think it is important because you raised the issue, Mr. Chairman. When that fair market value tax was considered, it was designed as a revenue-raising measure of approximately \$7 million.

History has now shown us that it reached \$7 million perhaps only when it was escalated and now is not, in fact, producing yet. It also had a very, perhaps, tenuous list of compliances as far as getting the number of taxpayers that should have been paying this into the fund. It had problems, and the problems out there continued to exist and there was a poor experience. All of those four points fly directly in the face of the oil industry. We have paid the \$7 million into it; it continued to accrue. We were complying. As a matter of fact, a list of petroleum taxpayers was almost as large as the list of the hazardous substance taxpayers. There was little or no problem, and poor experience, but yet, were continued to shoulder this burden on the petroleum industry and petroleum refining industry in the State.

We suggest that this legislation, as it is considered before this Committee, ought to perhaps address that.

Let me just offer one brief perspective, Mr. Chairman. In the oil industry, coming from the oil industry, the legislation that is drafted should contain provisions requiring a list of taxpayers be made available to the public, and just as we do in the motor fuel industry, annually or monthly Sid Glazer and the Director of Division of Taxation comes out with a listing of all of the companies selling motor fuel in New Jersey and how much they have sold that particular month. There is no reason why that type of concept could not be embodied into this legislation to allow the general public or interested parties to go and view, perhaps not the actual dollars and cents -- I can generally agree that there might be some problem of confidentiality there, what have you -- but at least the listing of taxpayers made so that

one is assured, a legislator, an interested party, and the public, that that tax in fact is being paid and the appropriate companies are paying that tax.

ASSEMBLYMAN LESNIAK: That is a good suggestion.

ASSEMBLYMAN LESNIAK: In terms of identification of the name.

MR. BENTON: Yes. In closing, we have submitted prior instances, detailed suggested legislative amendments to the Spill Compensation Control Act. We would be glad to make them available to you. We would be glad to make them available at any time. We feel they are comprehensive. We feel they are in line with the Superfund, that they do provide an immediate response mechanism and monies to certain situations which do arise, and we are pleased to see that the Attorney General and the Department of Environmental Protection have recognized some of the long-standing concerns of the industry and of generally accepted industry practices by listing those ten points. If you would like, I will give you some quick reaction to those points. But, I would like to let you ask any question.

ASSEMBLYMAN LESNIAK: I would prefer to hold off on that at this time until both of us have further opportunity to review both of those reports. I think we will be having a joint Committee meeting with the Senate to review these reports, and the final audit report that is done, in addition to ensuring that the initial audit recommendations were implemented, and at that stage, we will go over that area. I think we are all in agreement that we have had a significant amount of movement in the right direction in that regard.

MR. BENTON: There is no question about that, Mr. Chairman. If I may interpret your remarks, perhaps, as a very interested listener, it is that there will be a given time period before these concepts. These ten points, are embodied into an actual legislative bill, where necessary. Granted, they all don't require legislative action, but the ones that do, for instance, point number three, point number four, of the Office of the Spill Fund Administrator being embodied into the Department of Environmental Protection, that does have a legislative history to it, Mr. Chairman, which you are aware of, which in practice, has really not served us that poorly. The problem really was that the Department of Treasury was not completely prepared to offer that type of response and the type of feedback that the DEP really deserved. We would like to testify, or keep the door open for further testimony on that point because--

ASSEMBLYMAN LESNIAK: Fine. I don't think the recommendation was to take the Spill Fund Administrator and put him in DEP. I think it was in reference to specific procedures that ought to be in DEP, vis-a-vis the fiscal aspects of it. That is my understanding. But in any event, I haven't had an opportunity to review the specifics of that.

MR. BENTON: I am referring directly to recommendation number three. DEP and the Treasurer recommend centralized Spill Fund operations in DEP to unify management control. We feel initially there was a good legislative history behind the two separate departments.

ASSEMBLYMAN LESNIAK: I agree.

MR. BENTON: But we will offer you further testimony on that.

ASSEMBLYMAN LESNIAK: Okay, fine.

MR. BENTON: I would be happy to answer any other question you might have.

ASSEMBLYMAN LESNIAK: Again, you don't have the figures in terms of the total waste generated by the petroleum industry?

MR. BENTON: No. Part of the problem is, although you are talking essentially about the four major refineries in the State, you really don't know where the other companies are and--

ASSEMBLYMAN LESNIAK: How big is Chevron vis-a-vis the entire industry?

MR. BENTON: Chevron, perhaps could answer that better than I could, but--

ASSEMBLYMAN LESNIAK: Twenty-five percent?

MR. BENTON: Yes. I would say pretty close to 25%, although it varies. Chevron, up until their announced cutback a few days ago, was our State's number one refinery with Exxon pulling back to under 100,000. Now, Chevron has pulled back.

ASSEMBLYMAN LESNIAK: Just to get things in proper perspective, conservatively, 25% of the industry, 60,000 tons generated a year -- 6,000 tons generated a year, which would come down to \$60,000 under this legislation. Sixty thousand dollars certainly would not be the breaking point for Chevron vis-a-vis any cutbacks, would it?

MR. BENTON: It is difficult to say.

ASSEMBLYMAN LESNIAK: I am not changing my mind in terms of my initial statement. My initial statement remains the same. It is not the intent of this bill to impose any additional tax burdens on the oil

industry. However, in perspective, you raised the issue of an additional tax burden, that tax burden in and of itself is somewhat insignificant.

MR. BENTON: Mr. Chairman, it is difficult for me right now, not having the figures which we have discussed, it is always difficult to pinpoint, even if you ask a particular company executive, "Where was the straw that broke the camel's back?" In other words, where was the last straw that they recognized, either a current responsibility and liability, or a future liability that they will, down the road, be generating, in this case, the hazardous waste that initially caused them to begin to move crude, which is what we are talking about in the oil industry, to a Gulf-coast refinery or to a west-coast refinery and then just ship it up to New Jersey. That is already done by those companies that operate out of state. The point, if I can bring any home to you, Assemblyman, is that really-- The point, if I can bring any home to you, Assemblyman, is that these refineries in New Jersey are undergoing perhaps something that is a little bit unique in our industry and that is hard times. Competitively, particularly here in New Jersey, they are not comparing, not only internally favorably with other refineries, but the international implication. The list I offered you bears that proof out. It is difficult for me, or for anyone, I believe, to point out exactly where the straw is that breaks the camel's back. But, you are aware, being from Union County, that the number of jobs and the number of employment opportunities, not only for those people who are employed directly by a refiner, but those who come in and manufacture or create products that is a spin-off of the refining industry here in New Jersey.

ASSEMBLYMAN LESNIAK: I am well aware of that, as you know, and I just like to put things in proper perspective, myself. Certainly this bill, even if it went through as is, would have less than minimal impact upon the petroleum industry. I am not saying that it is going to go through as is because if it doesn't comport with my original statement, it may not, then we will change it. However, I am also sensitive to statements being made. Again, I have to bring up the past. Those same arguments were made three years ago regarding this bill by companies from this district about the impact, and again, those statements made were a 1,000% wrong by a factor of 10. But, I know that you did not make those representations.

MR. BENTON: Mr. Chairman, nor did someone directly in the petroleum refining industry make those statements. And the history, as you are bringing up history, is that the petroleum industry continued to pay the

majority of that money that we used for problems which they did not cause and they have had otherwise an excellent experience in New Jersey as far as oil spills. In fact, oil spills have not occurred in this State, and therefore, we submit to you that there is no legitimate reason at this point given the economic state in New Jersey, to continue to raise that \$7 million and disregarding the ultimate hazardous waste management manifest tax that we are talking about, there is no real reason to keep that fund at the \$7 million rate or to continue to siphon off that money. That fund should essentially be allowed to retain the monies for which they are collected; that is an oil spill, in the event that there is an oil spill in New Jersey, that money could be used to clean up that given situation.

ASSEMBLYMAN LESNIAK: An oil spill from an unidentifiable source or a bankrupt source.

MR. BENTON: That would perhaps be the situation as it develops in a most likely scenerio. Where you have an oil spill that is a company that can be identified, that company immediately cleans it up or if it occurs in the New York/New Jersey harbor out here, we have an industry-financed co-op to respond to that immediately. Even before your DEP or other agencies get involved, they would be the first line of defense out there to contain that.

By the way, Mr. Chairman, I would like to go on record as inviting you or any member of the Committee to go out and actually observe the boats, the booms, and the facilities that they have right here. I believe they are located down in the Perth Amboy area, to come out and witness this first-hand for yourself. They would be the first line of defense should an oil spill occur, perhaps because of a tanker or perhaps because of unforeseen circumstances that I can't imagine at this point.

ASSEMBLYMAN LESNIAK: Thank you, Jim. Thank you for your testimony.

MR. BENTON: Thank you, Mr. Chairman. Again, we are looking forward to being an active participant in your legislation, and we applaud you for keeping and getting the ball rolling.

ASSEMBLYMAN LESNIAK: Thank you, Jim. Our next witness is Carl Colburn from Chevron, after recess.

(Recess)

ASSEMBLYMAN LESNIAK: All right. Do we have everybody back? Okay? I am told that I was correct in what I stated about the Attorney General's recommendation vis-a-vis the Spill Fund Administrator and the Department. It is the Department's response to that which stated that they want the Spill Fund Administrator in DEP. However, the Attorney General's recommendation was vis-a-vis additional fiscal control as being in DEP and not the Spill Fund Administrator being in DEP. So, that is just a different viewpoint of the Department. But, the Attorney General's recommendation was in line with what I conceptually thought it was.

MEMBER OF AUDIENCE: Mr. Chairman, we didn't have that in writing. We just reviewed it.

ASSEMBLYMAN LESNIAK: I understand. Go ahead, Mr. Colburn. I'm sorry.

C A R L C O L B U R N: Thank you, Mr. Chairman. I did not plan to participate and testify at this hearing this morning, but I appreciate the fact that you have given me enough time because of the importance to our industry and our company at large. Being a spokesman, I would be somewhat remiss if I didn't take on the responsibility of explaining the use on the impacts it is to Chevron, USA.

ASSEMBLYMAN LESNIAK: Okay. You did hear my statement, that it is not the intent of this legislation to raise any additional monies from the petroleum industry?

MR. COLBURN: That is correct. However, as it has been working, and as it is anticipated with your amendment to the bill, it still impacts us to the extent that we feel it is grossly unfair to the industry, to the residents of the State of New Jersey. Inasmuch as Jim Benton so well pointed out earlier, the Spill Compensation Fund was initially set up when there was going to be some drilling off the Atlantic Coast in the Baltimore Canyon. That was some five, six years ago, and there has been some 27, 29 wells drilled. No crude oil was found. They have buttoned up all of the wells, and we are continuously paying a cent a barrel into the Spill Fund, and it cost my company last year some \$600,000 plus at the 160,000 barrel a day rate. I just wanted to correct for the record, Chevron's capacity was 165,000 barrels, rated capacity. We have been operating roughly around 120,000 barrels, and then last week we announced a reduction of 88,000 barrels a day.

ASSEMBLYMAN LESNIAK: What does that gross out to be?

MR. COLBURN: Well, it is going to cost us, next year, just at a penny a barrel, \$320,000 a year in the Spill Fund tax.

ASSEMBLYMAN LESNIAK: What is your total gross derived from New Jersey State operations? Company's gross?

MR. COLBURN: I'm not a financial man. I don't know that, Mr. Chairman, but if it is that important, I certainly can develop the information. Oh, we do somewhere around, total light products, 13% of our company's, total light product sales in the United States.

ASSEMBLYMAN LESNIAK: Do you know what that is in dollars?

MR. COLBURN: No, I don't.

ASSEMBLYMAN LESNIAK: It is fair to say that it is probably over a billion dollars?

MR. COLBURN: Oh, absolutely. Sure. In gross, absolutely. The fact remains that in addition to the \$600,000 in the previous year and the anticipated \$320 thousand in 1982, because of the reduction, it costs us somewhere -- because of a local ordinance -- around \$700,000. Any time we get a ship in with crude oil or a ship going out with products, we have to put a boom around that ship. We have to have four shifts on hand, 24 hours a day, plus the boom itself, plus the maintenance boom, and that costs us somewhere close to \$700,000 a year, just to put the boom around the ship to contain any spill, if indeed there was any spill.

ASSEMBLYMAN LESNIAK: That is less than your total contribution to the Spill Fund? That particular item?

MR. COLBURN: That is more.

ASSEMBLYMAN LESNIAK: That's right. That's more than your total contribution.

MR. COLBURN: Right. So, it would be that plus what we contribute to the Spill Fund. Now, in the past few years since we have had--

ASSEMBLYMAN LESNIAK: That's Perth Amboy?

MR. COLBURN: Pardon me?

ASSEMBLYMAN LESNIAK: That's Perth Amboy's ordinance?

MR. COLBURN: Yes. Perth Amboy, Woodbridge. Now, in addition to that, we have had recorded, and this can be verified by the U.S. Coast Guard, five gallons of products spilled in that period. So, if you take in one year, that is roughly \$135,000 per barrel. That is five barrels spilled in the entire five years that we had this ordinance. So roughly, it equates to be about \$5.00 a barrel. You have to admit, that is quite expensive.

But, in addition to our contribution to the Spill Fund, the industry itself has taken upon itself some years ago--

ASSEMBLYMAN LESNIAK: Excuse me. That is arising out of that local ordinance.

MR. COLBURN: That's right. We still have to pay for it. It is still the cost of doing business for Chevron in this area.

ASSEMBLYMAN LESNIAK: I don't want to defend that ordinance. I'm not going to defend that ordinance, but is it possible that because of that ordinance and because of those precautions there was such a small amount spilled? That there could have been a significant spill if that ordinance hadn't been in effect?

MR. COLBURN: No, because again, the industry is geared up to contain that itself, as we have with the clean harbor cooperatives. This is an organization that is made up of eight companies.

ASSEMBLYMAN LESNIAK: You raised the ordinance, I didn't. Let's forget about the ordinance.

MR. COLBURN: But, I want you to be aware that it is the cost of doing business here in the State. So, you are not only looking at the one cent per barrel, we are paying a heck of a lot more in the event of taking precautions with the booming or local ordinance, that it is still an additional cost of doing business here in the State of New Jersey.

ASSEMBLYMAN LESNIAK: We didn't place that burden on you.

MR. COLBURN: No, but, it still compounds and we are doing this to prevent a spill, as we are with the cent a barrel that we are paying the \$600,000 now, which is reduced to \$326,000 and it is being used for something other than what the intent was there to begin with. Those monies are used. Of course, the Star-Ledger said this morning that \$26 million was used to clean up the Chemical Control. Just for a matter of record, the \$26 million that they used to clean up Chemical Control came from the petroleum industry, not the petrochemical, as Herb Jaffe pointed out, and I corrected--

ASSEMBLYMAN LESNIAK: Most of it came from the petroleum industry.

MR. COLBURN: That is correct. In addition to those expenditures--

ASSEMBLYMAN LESNIAK: That wasn't the original intent of the Spill Fund.

MR. COLBURN: That is correct. That was not the intent of the Spill Fund at all.

ASSEMBLYMAN LESNIAK: But, it was the intent of the amendments to the Spill Fund. We were well aware of it at that time.

MR. COLBURN: At that time?

ASSEMBLYMAN LESNIAK: I certainly was aware that there was a pot of money close to some \$20 million at that time, that we would be making available for the cleanup of Chemical Control.

MR. COLBURN: But I don't think it was agreed upon. The initial intent, again, being for petroleum spills, if the DEP decided to use those monies to clean up the Chemical Control, I would just think it was stealing from Peter to pay Paul. It wasn't intended. You should go back to the industry. You have two different industries--

ASSEMBLYMAN LESNIAK: I'll tell you what my intent was, because it was my law. It was my intent to tap that source of revenue to clean up Chemical Control. I admit that. I have always admitted that. I admitted it the day that -- every single day that bill was placed into legislation and going through and signed by the Governor. We had a very serious problem at that time, an emergency situation that was threatening the lives of the people of the City of Elizabeth, and all of the surrounding areas. It was a source of money that was available to us at that time. I am not going to apologize for that. Without that, quite frankly-- I thank the industry for that money. But, without that, I think we could have seen some mass destruction in the City of Elizabeth and thousands of lives threatened.

MR. COLBURN: And the industry was glad that the money was available. The only thing is, why should we continue to be penalized at this rate, of a cent a barrel, which is very important to us, to clean up some other industry's hazardous waste? That is where we are coming from. We are doing everything in our power to maintain and keep our own industry clean, such as going into the clean harbor cooperatives. We have some \$4 million worth of assets in here and it is not coming from the State coffers. It is the industry paying for a manager and his staff. We have two big contractors on retainer to get out there if, in the event there is a spill, we can get pronto-type service to contain and clean up the spill. It is \$4 million worth of equipment. So, what you are saying to us, then, is, if we have to continue, we might as well abandon this program, and if indeed there is a spill out in the harbor, go to the Spill Fund from the State coffers and let them clean it up.

ASSEMBLYMAN LESNIAK: Well, if you do that, we are going to charge you three times the cleanup cost.

MR. COLBURN: This is the point. You want us to--

ASSEMBLYMAN LESNIAK: If you do that, we can charge you three times the cleanup cost.

MR. COLBURN: But, if the monies are strictly for petroleum cleanup, the monies that we are contributing at a cent a barrel would handle any kind of problem.

ASSEMBLYMAN LESNIAK: What I am saying is, that would not be advisable for you to do because under the current law, if you are responsible for the spill, and you don't clean it up, you have to pay three times the cost.

MR. COLBURN: And the industry would, Mr. Chairman. The only thing--

ASSEMBLYMAN LESNIAK: That's a red herring. You are not going to do that. We are not going to do that. You are going to clean up the spills that you are responsible for. I know that and I accept that. That is part of being a responsible citizen of the State of New Jersey. This bill is not going to increase the burden on your industry. If it does, it will be amended to insure that it doesn't. I just want to assure you of that.

MR. COLBURN: Mr. Chairman, I hear what you are saying. However, while it is not going to increase the burden, it is still a burden having the petroleum industry use these funds to clean up hazardous waste handled by a different industry, the chemical industry. We are saying it should be two separate funds. A fund for the petroleum industry to clean up spills, and a fund based on some sort of a means of generating-type tax in the chemical industry to handle their own hazardous waste. That is what bothers us. You were talking earlier about economics 101. If it continues again, it is just basic economics. If we can't continue to make the type of necessary return on our investment, you don't leave the industry much else to do.

ASSEMBLYMAN LESNIAK: This law affects you less than the local ordinance affects you. Is that correct?

MR. COLBURN: That is correct.

ASSEMBLYMAN LESNIAK: Okay.

MR. COLBURN: But, it is not being used for the intent. It is not being used to clean petroleum products. It is being used to clean chemical waste.

ASSEMBLYMAN LESNIAK: There is a problem of unidentifiable petroleum leaks that cannot be traced directly to petroleum sources, as I explained earlier before, regarding the underground tank situation. That is unidentifiable and we cannot pinpoint a petroleum product, although we know that it is. It is not black and white as you admit, as you propose. I do admit, and as I said before, there no doubt is a disproportionate share paid by the petroleum tax. I understand that. It is not as disproportionate as you stated because of the unidentifiable source problem. To what extent it isn't, I don't know. I know that it is there. To what extent, I am not sure because of the fact that we really don't know to what extent petroleum products leaking from tanks, to what extent that problem is in the State of New Jersey. Until we start testing some of our underground water sources, we are not going to know. So, I am saying that maybe somewhere in the future, it may not be as simple a proposal as you are making it out to be. Let me make this quite clear. Again, I have said it many times. We are not going to increase any burden on the industry under this legislation.

MR. COLBURN: I appreciate that, Mr. Chairman, but we would also like to have you consider splitting the fund. I would just like to say one thing in passing.

ASSEMBLYMAN LESNIAK: Let me say this. If another legislator introduces it, I will put it on my Committee agenda.

MR. COLBURN: Okay. I would like to just clarify one thing before I leave. You are talking about the leaky tanks at service stations. Of course, the industry -- I have to talk about Chevron, but I am sure the industry in general -- all have in place and have had in place some time an inventory method checking/testing device because the price of gasoline is so expensive, and you can lose the product so rapidly. The cost of the gasoline would prohibit any kind of an operator or businessman not to test and take inventories of his product in the tanks. So, by and large, I think the industry does have a pretty good grasp as to where the leaky tanks are and if they are leaking, they are doing something to rectify it. Thank you.

ASSEMBLYMAN LESNIAK: That is for another time and place because we will be discussing that legislation which will be introduced in a couple of weeks. Thank you very much, Mr. Colburn.

Our next witness is Gloria Davis from the Coalition for United Elizabeth. Gloria? The only other person I have to testify is-- Is it

Carrie or Connie? I'm not sure. Is there anyone else who wants to testify at this time? If so, could you come up and give your name, please? Gloria?

G L O R I A D A V I S: I just wanted to make a short statement and also comment on a couple of the provisions in the bill.

Developments within the last two years, specifically within the last two months, speak only too well for the need for a strong effective Spill Fund. Strong enforcement of health codes and financial provisions should be made for some type of health testing. Although the cost of cleanup operations at the Chemical Control site are presently being investigated, no serious health testing has been conducted to determine the harmful effects of the Chemical Control fire in Elizabeth Port and relocated Bay Way residents.

Last week, the Department of Environmental Protection stated that Born Chemical is not a dangerous site. Born, a storage site for eight tanks filled with hazardous waste, is located at 632 Front Street, in a densely populated residential area. This is the same DEP that allowed the dangerous build-up of barrels at Chemical Control over two years ago. We would not have a growing, so-called, toxic waste problem if responsible State and local agencies one, encouraged companies to treat or recycle toxic wastes at the plant site which is, I know, a provision in the bill, and also, enforce regulations that are already on the books.

We call upon you, Assemblyman Lesniak, and other members of the Committee, to guarantee or to fight for some type of health testing and treatment of area residents. And, I know you have already done that over the last couple of years, tried to get that through. These programs could be financed by monies obtained from fines on companies that pollute or trucking operators guilty of leaks or spills. The possible fines on LJ and (inaudible) Chemical Company, the company involved in a truck spill that just happened on August 8th, could be used to finance stronger enforcement in funding for health testing, if fines were stiff.

Just to give you an example of how ridiculous things are, on September 18th, the Daily Journal reported that studies investigating the cause of the spill cost \$12,500, while fines, the highest amount of fining would only amount to \$1,200. These are miscarriages of justice for which the taxpayers bear the burden. While a stronger spill fund would go a long way toward dealing with some of the after-effect of the spill, we urge our

legislators to discuss ways of wiping out the toxic waste problem at the start of the process, at the generating site.

We think it is appropriate, as you stated too, to hold the public hearing for the Spill Fund here in Elizabeth, since Elizabeth has been the scene of such serious life-threatening accidents. The Coalition for United Elizabeth invites all participants at today's hearing to meet with the CUE Environmental Task Force to help develop effective legislation.

The one comment we wanted to make on the provisions is that we have found for us it seems that there was a certain weakness in favor of trying to give certain breaks to chemical companies and the oil companies, especially the whole thing of letting them out altogether. But, one thing we wanted to stress, especially on page four -- I think you are familiar with this too, Assemblyman Lesniak -- for residents, the community people who had to bear the brunt -- I'm not just talking about property damage effects, but also health effects of these spills and accidents, whatever you want to call them, the leaks. To our knowledge, there have been very few cases, if any, of people being able to apply under the Spill Fund to receive some kind of monies to help deal with property damage, but also, for the whole thing about the fund, people who have suffered some type of health damage as a result of these spills.

So, that is the only thing that we are crying about. We see that -- you can be fair to companies who have taken serious efforts to clean up -- companies have taken serious efforts to recycle their waste and take care of it on the spot instead of having to transport it all over the country and all over the State. But, what about the people in the neighborhoods who have to deal with this day after day? There is nothing done, and I think you are familiar with this, that there are people even relocated Bay Way who you mentioned before who applied to try to get monies for damage to property, and they got nothing. We are seeing more and more, even from the spill that took place the other day, people still complaining that they have headaches, and that was just a so-called smaller spill. What can be done for these people under the provisions of the Spill Fund? If not under the provisions of the Spill Fund, but you have made allotments for the damage thing on here, couldn't there be some more allotments made in here for health testing - health funding?

I am sure Carrie Thomas has something to add, but that is our main complaint as it stands now.

ASSEMBLYMAN LESNIAK: I like your suggestion very much, regarding dedication of the fines. I think it is a good idea. We do have a health-care program that has been very slow getting off the ground. I had a battle getting the legislation through. We do have legislation on that, which was, I believe, introduced, or proposed for introduction. I don't know whether we officially introduced it or not, but it has been drafted, in any event, to insure that that health-care strike force team goes into the affected community. I am talking, certainly, about Elizabeth residents, whom I primarily had in mind, and which the Health Department kind of distorted and established something in Trenton. As you know, we have a problem. We write the laws, we don't implement them. As much as we can, we like to have an effect on the implementation of those laws, as the first part of this hearing was devised to do. We don't, as legislators, supervise the cleanup operations, nor do we supervise any departments.

MS. DAVIS: What about the specific proposal about putting that in? I mean, as a valid part of the Spill Fund? That is, I think you have made a lot of allotments.

ASSEMBLYMAN LESNIAK: The health care strike force team is already a part of the Spill Fund.

MS. DAVIS: By making that an operating part, it seems like everything else is operating. What we are saying is, that has to be a priority right now. The other parts have been operating to a certain extent. This has not been.

ASSEMBLYMAN LESNIAK: What legislation I have introduced will establish more specific criteria for that operation because of the fact that the Department of Health did not implement it with the intent in which it was derived. So, that legislation will be moving alongside of this.

MS. DAVIS: And, one other thing, the point about Born Chemical, which I mentioned earlier. That is a storage-- I think I spoke to you once about that before.

ASSEMBLYMAN LESNIAK: The important thing about that, again, that issue is going to be addressed in other legislation that is pending now before the Senate, where we will have criteria established for the determination of sites and the priority listing in terms of their -- whether they are dangerous or hazardous or not hazardous, so that in any particular instance the public -- and it is very important for us to have the confidence

of the public behind us -- will be aware that any decision was based on legitimate findings and criteria established under law.

MS. DAVIS: Okay. If you are really that interested in the public, I would just submit one more thing. Even having the meeting at 10:30 in the morning. When you talk about having a public hearing, most people do work these hours. Why don't we have more hearings like this at night? I know when they had the hazardous waste siting commission meetings, they had some of those meetings at night, specifically because they knew a lot of people work during the day. Also, the whole thing about public input, where is there a way for community and public input into all of these things? I see a lot of ways for industry's input. Where is the community input into these days?

ASSEMBLYMAN LESNIAK: As you are very well aware, I have a full-time legislative staff and I am probably one of the few legislators who have two full-time legislative staff people. As you are also aware, I am sure, I have an office at 60 Prince Street which is open to you and the public at any time to go to speak to my staff.

MS. DAVIS: But I am talking in terms of insuring it within the writing of the bill itself, making some points in there for that.

ASSEMBLYMAN LESNIAK: That is what I am saying.

MS. DAVIS: No. I'm not just saying I come to your office to talk to you, but even with provisions of the bill. How do you ensure that there is some way for public input or community input? That is usually the complaint. You were saying you need the confidence of the public.

ASSEMBLYMAN LESNIAK: That is what I am saying right now. That is what I am trying to say now. Okay? My office is always available. I have a full-time legislative staff, as I said, one of the few in the Legislature. Any proposals, if you don't want to speak to my staff or to me personally, you can do it through the mail and address any issue. Certainly we will take all of your suggestions under consideration. I particularly like the idea about the dedicated funds that you mentioned. Hopefully we will be doing something about that.

MS. DAVIS: I would just like to leave with reaffirming the whole thing, but, we would like to see more leeway made for the people. It just seems like the changes, most of the changes, because we have not had a chance to go point by point on the bill-- We just got then too, the new revisions.

ASSEMBLYMAN LESNIAK: Were you around three years ago, when we did the initial amendments?

MS. DAVIS: Not the initial amendments. Even two years ago, around the Chemical Control, no. But, I just wanted to point that out because that has been the complaint that we have been getting, and I raised that to you before. So, I am sure you are familiar with that. Thank you.

ASSEMBLYMAN LESNIAK: Just let me ask you a couple of questions. You are, I am sure, aware of the fact that we have, in the State of New Jersey, some 300 chemical dump sites of varying degrees of danger. You are also aware, I am sure, that throughout the United States we have thousands upon thousands of chemical dump sites of varying degrees of danger. Is that not correct?

MS. DAVIS: Yes, go ahead. Get to your point.

ASSEMBLYMAN LESNIAK: Okay. You are probably also aware of the fact that Chemical Control is the only site right now to have been cleaned up and that site happens to be in the City of Elizabeth, the only city in the nation to receive anywhere near the amount of cleanup effort. I could cite Love Canal as an example. Do you know that not one gallon of hazardous materials has been removed from Love Canal?

MS. DAVIS: They have spotted barrels that came from Chemical Control at Love Canal.

ASSEMBLYMAN LESNIAK: Not at Love Canal. At Niagra, where there is a disposal site. As a matter of fact, most of the materials removed from Chemical Control have been disposed of at disposal sites outside of the State of New Jersey.

Okay. Thank you. Our next witness is Carrie Thomas.

CARRIE THOMAS: I am Carrie Thomas, President of CUE. Just to add a little bit to what Gloria was trying to express-- I'm very sorry that besides yourself and a few others (inaudible) and what our main concern is-- We hear what you are saying about the bill. I am not a scientist, and I don't have a chemistry degree. But, I invest in people.

It is too bad that all of these gentlemen who were here couldn't really stay long enough to listen to what the chemicals have done, as you recorded how many throughout the State are doing to peoples' lives. The sad part about it is, most of those people are dying and they are still testing

to prove that they are sick, and they have died and are dying from chemicals -- toxic waste -- don't even work for those companies, and they have been dying.

I just want to say that I appreciate the effort that you are making, hoping to bring about a bill that would take care of some of that toxic waste, hoping we can keep it from coming into our cities and finish killing off our people down in the toxic area.

You say you have a bill, and you are pushing for it. As I sit here and listen, I am praying that that bill, too, will come under the biggest bill. We have people down there across the city who are sick, and we believe it comes from toxic waste. Now, they can't even pay the bills.

We have a woman down there who had one operation. She has two more lumps on her breast. She lived near Chemical Control; she lives in relocated Bay Way. She doesn't have the money to have those lumps removed now because she can't pay the bills that she has. Maybe if some of the people who are here would kind of come out of their shells, making so many dollars, and start looking at human beings, they might be willing to pay the tax that you are talking about today. When that tax bill is paid, it won't affect the normal non-working and working human beings -- that when their company has to pay more tax to take care of this waste that is killing people, their food bill won't go up, their rent won't go up -- because everybody can have taxes, and they have to pay more taxes on anything. The poor, the low-income working people always have to pay more for whatever.

Negative. I hope this bill won't become that type of burden on ordinary people. The companies, if they were here, would be willing if they could just see the people, see the kids, see the elders, see what it has done to some of the property. And, the people who are relocated in Bay Way, their age is telling them, "You can't see, you can't walk off and leave that like a (inaudible) and go somewhere else in the country, because of your age, and start all over again." That is a sin and a crime.

The chemicals in this country are destroying us. It is too bad that most people are not going to even live to spend all of the money they are making, because they are killing other people and they are killing themselves.

Sure, we enjoy all of the luxuries that comes from oil, etc., but somehow with all of their brains, and all of their education, and whatever,

it is too bad we had to let it get out hand to the point where it is killing us.

Elizabeth sits in the crest -- the chemicals around Elizabeth. I know you know what I am talking about -- like a (inaudible) -- chemicals spilling everywhere. Children are breaking out in rashes. You see, this is a bigger thing than saying, "Well, we are going to recycle it." Sometime we had better try and see, do we really need all of this stuff? It might be down on Front Street. It might be over there, in relocated Bay Way. But, after a while, it is going to be in all of those other ways across the country. Sooner or later, we are all going to die from chemicals. For some reason or another, we have not respected the law of chemicals, and chemicals are killing us.

It is too bad that it is chilling for the companies to understand what they are doing to the people, and the people who are working for them. They are dumping us out of our lives.

I hope all of your bills are passed. But, I hope our hearts and our minds will stop and look to see that everybody in this room is a human being, believe it or not, and I think we all will put some real thought into this, and to the companies making money, and making money that you are not going to be able to really enjoy, because it is later than you think. Thank you.

ASSEMBLYMAN LESNIAK: Thank you, Carrie. Let me assure you that when we consider the reauthorization of the health care strike force team, that we will have a meeting in Elizabeth in the evening. Thank you.

This meeting is adjourned-- No, excuse me. This meeting is not adjourned. We have more people to testify. We will hear from Harry Moscatello. Harry?

H A R R Y M O S C A T E L L O: Mr. Chairman, thank you for the opportunity of coming in at the tail end of your hearing this morning. My name is Harry Moscatello, and I represent S&W Waste, Incorporated, which is one of the licensed processing facilities in New Jersey. I received a copy of the bill from your staff assistant today, and I have had very little time to review it. My purpose here is not to make specific suggestions or comments regarding the bill, which I would intend to follow up on in writing, if that is acceptable to you, to your Committee aide, but, I would ask you if

you could give those comments your attention when you receive them, in that they will address a very specific aspect of the handling industry that has developed in the State in response to the generation of material in this State.

ASSEMBLYMAN LESNIAK: Transfer stations?

MR. MOSCATELLO: Yes, right.

My company is engaged in the business of serving primarily the smaller generators of waste in the State, and preparing and consolidating their shipments for proper disposal at secure final disposal facilities outside of New Jersey. So, our primary activity is one of removing waste from heavily residential and densely populated areas of the State in which it is generated, and delivering that waste in proper containers after proper processing to those facilities registered in EPA for acceptance of the waste. We deal with final facilities in states as far away as Alabama, and ranging out to Ohio, depending upon the nature of the material that is generated.

The bill, if I understand it correctly -- I'm not sure that I do -- is quite complicated. I haven't had too much time to really delve into it, but it would include, as a disposal facility, the type of operation that we conduct, even though we do absolutely no disposal on our site. And, it would tax an activity at our facility -- if I understand it correctly -- that by definition of DEP, yes, in deed, we are what they call a transfer of storage disposal. So, I think what has happened here is, we have adopted a definition of facility that is used by the regulators, and we haven't really changed that definition to have it fit a taxation program. No matter what change takes place here, I have a feeling that a company like ours is going to get caught in a double taxation situation unless it is properly thought out. I don't know the answer, but I am asking for your consideration and the consideration of your staff in developing an answer, maybe along the lines that was developed for the recycling industries, which are treated separately in the bill.

So, I will follow up in writing on that.

ASSEMBLYMAN LESNIAK: I am aware of that situation, since you have brought it to my attention. I was not before.

MR. MOSCATELLO: Okay. Thank you, Mr. Chairman.

ASSEMBLYMAN LESNIAK: Thank you. Now this meeting is adjourned. Thank you very much.

(Hearing Concluded)

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

NEW JERSEY DEPARTMENT OF TREASURY

HAZARDOUS SUBSTANCE CLEANUP
PROGRAM CHANGES ANNOUNCED

FOR IMMEDIATE RELEASE

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TRENTON--Recommendations for improving the state's hazardous substance cleanup program which have previously been sent to Governor Thomas H. Kean were released today by Commissioner Robert E. Hughey of the state Department of Environmental Protection (DEP) and state Treasurer Kenneth R. Biederman.

Their combined report, much of which has already been acted upon and was outlined to the Governor early this past summer, was formally released today to coincide with the release of a fiscal and management review of the State Spill Compensation Fund.

"In releasing the reports simultaneously, Mr. Biederman and I hope to avoid confusion through a coordinated effort. As is clear from many of the points outlined in the attached summary, we have been implementing changes in the program since March," Hughey observed.

He added, "We should also note that future changes will likely result at the completion of an audit by the firm of Coopers and Lybrand, which is expected to be completed shortly. Many of the comments that might be made regarding fiscal matters will be held until the Coopers and Lybrand audit is received and reviewed," Hughey continued.

Biederman commented, "I think it is clear that the degree of cooperation between DEP and the Treasurer's office has produced the kind of detailed analysis and specific and comprehensive recommendations needed to address and solve the problems raised by the Attorney General and others.

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"The reorganization and restructuring recommended and begun by Commissioner Hughey and I will get at the root of the issues which have caused the initial problems with the Spill Fund."

The Attorney General's report identifies three major problem areas; lack of accountability for fiscal operations, contracting problems and deciding which sites should be cleaned up first. In the joint Treasury-DEP recommendations to the Governor, the problem of lack of accountability was singled out. The major reason for this problem was identified as the existing split in authority between the Treasury's Office of the Spill Fund Administrator and DEP.

The joint Treasury-DEP analysis recommended as a solution placing full administration of the Spill Fund under DEP.

The Attorney General's report states that the current time and materials contract has led to the payment of premium rates for non-emergency work. That report recommends the use of either fixed-price contracts or cost-plus fixed-fee contracts.

"We have already implemented changes in our contracting process which include and go beyond the Attorney General's recommendations," Biederman said.

"All jobs which are not emergency in nature will be let on a fixed price basis. This will result in maximum conservation of public dollars and easier auditing," the Treasurer continued.

He added, "In addition, we have formulated a new emergency contract which strictly limits allowable job costs. This emergency contract goes beyond what was recommended by the Attorney General."

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Hughey stated, "The selection of sites is perhaps the most difficult problem to solve. The considerations which must be taken into account include hazard assessment, fiscal restraints and the financial viability of responsible parties.

"We believe that two factors are the most critical; we must spend state dollars as effectively as possible and only as a last resort. To further these goals, we have developed a process which insures that all criteria necessary to proper management decisions are taken into account."

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ATTACHMENT: Ten recommendations in a report by the Attorney General's office, with DEP and Treasury responses.

SPILL FUND RECOMMENDATIONS

RECOMMENDATION I: NEED FOR COMPREHENSIVE CLEAN-UP PLANNING

RESPONSE: DEP PRIORITY LIST, IN USE SINCE 1/81, IS UPDATED REGULARLY, IN ACCORDANCE WITH FEDERAL SUPERFUND PROCEDURES.

DEP RECENTLY REORGANIZED DEPARTMENTAL WASTE MANAGEMENT FUNCTIONS TO ASSURE GREATER ACCOUNTABILITY IN DECISION MAKING.

RECOMMENDATION II: NEED FOR WELL-DEFINED CLEAN-UP SITE WORK PLANS

RESPONSE: NEW PROCUREMENT PROCEDURES ADOPTED 3/82, REQUIRING FORMAL BIDS

DETAILED SCOPES OF WORK TO BE INCLUDED IN ALL REQUESTS FOR PROPOSALS.

RECOMMENDATION III: ELIMINATE "SPLIT" IN ADMINISTRATION OF SPILL FUND

RESPONSE: DEP AND TREASURER RECOMMEND CENTRALIZED SPILL FUND OPERATIONS IN DEP TO UNIFY MANAGEMENT CONTROL.

RECOMMENDATION IV: EXPAND DEP FISCAL RESPONSIBILITIES

RESPONSE: NEW PROCEDURES ESTABLISHED (3/1) FOR AUTHORIZATION AND USE OF SPILL FUND, PROCESSING PAYMENTS, INTERNAL AUDIT, FINAL AUDIT, AND COST ACCOUNTING.

CONTRACT COMPLIANCE IS ASSURED IN THIS PROCEDURE AS WELL AS IN TREASURY'S CONTRACTING REQUIREMENTS.

RECOMMENDATION V: RESTRICT USE OF "TIME AND MATERIALS" CONTRACTS

RESPONSE: NEW CONTRACTS WILL BE MUCH TIGHTER, BASED ON PREVIOUS EXPERIENCE.

"TIME AND MATERIALS" CONTRACTS WILL BE LIMITED TO EMERGENCY SITUATIONS; OTHER CONTRACTS WILL BE BID.

RECOMMENDATION VI: Use "FIXED FEE" CONTRACTS WHEN THERE IS NOT AN EMERGENCY. USE A CONTRACT ADMINISTRATOR TO EVALUATE CONTRACTS

RESPONSE: FIXED PRICE CONTRACTS WILL BE USED IN NON-EMERGENCY SITUATIONS OR WHEN AN EMERGENCY HAS BEEN ALLEVIATED.

DEP IS ORGANIZING TO USE A CONTRACT ADMINISTRATOR APPROACH IN PREPARING CLEAN-UP PROPOSALS AND MONITORING WORK PROGRESS.

RECOMMENDATION VII: DEVELOP A UNIFORM RECORD KEEPING SYSTEM FOR INTERNAL AND EXTERNAL USE

RESPONSE: NEW (3/1) DEP POLICY PINPOINTS RECORD KEEPING RESPONSIBILITY AND PROVIDES CHECK POINTS THROUGH AUDITS AND ROVING ACCOUNTANTS.

RECOMMENDATION VIII: DEVELOP A COMPREHENSIVE TRAINING PROGRAM AND MANUAL FOR ALL HAZARDOUS WASTE MANAGEMENT RESPONSIBILITIES

RESPONSE: SOME TRAINING SESSIONS HAVE BEEN HELD FOR STAFF. FORMALIZED TRAINING IS BEING DEVELOPED AND IMPLEMENTED.

RECOMMENDATION IX: ESTABLISH FORMAL PROCEDURES FOR CASE DISPOSITION AND INFORMATION EXCHANGE AMONG THE SPILL FUND OFFICE - DEP - AND THE DIVISION OF LAW

RESPONSE: THESE PROCEDURES ARE IN EFFECT:

- DIRECTIVE LETTERS ARE SENT TO DISCHARGERS OR LANDOWNERS
- LETTER DIRECTS REMOVAL AND POTENTIAL LIABILITY
- NON-COMPLIANCE, DIRECTIVE LETTERS ARE FURNISHED TO THE SPILL FUND, WITH BILLS FOR REMOVAL
- WHERE PENALTIES ARE NOT SETTLED, CASES ARE REFERRED TO THE DIVISION OF LAW

RECOMMENDATION X: INSTITUTE A CENTRALIZED RECORD REPOSITORY AND UNIFORM CASE INDEX SYSTEM

RESPONSE: DEP IS MOVING TOWARD CENTRALIZED RECORD KEEPING THROUGH ORGANIZATIONAL CHANGE. COMPLETE CENTRALIZATION WILL BE ACHIEVED IN THE FUTURE WHEN FIELD OFFICE RECORDS CAN BE CENTRALIZED IN THE NEW DEP BUILDING.

**ADMINISTRATION
OF
HAZARDOUS WASTE CLEANUPS
A
HISTORICAL PERSPECTIVE
AND
RECOMMENDATIONS FOR THE FUTURE**

FINAL REPORT

AUGUST, 1982

ROBERT E. HUGHEY
Commissioner
Department of Environmental Protection

KENNETH R. BIEDERMAN
State Treasurer
Department of Treasury

ADMINISTRATION OF HAZARDOUS WASTE: FINAL REPORT

of

Kenneth R. Biederman

State Treasurer

and

Robert E. Hughey

Commissioner

Department of Environmental Protection

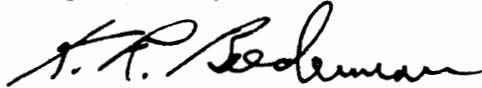
TRANSMITTED TO THOMAS H. KEAN

Governor of New Jersey

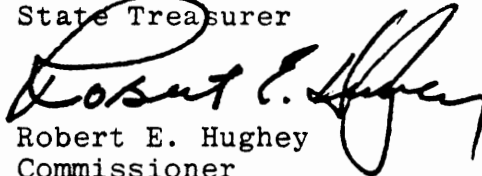
Honorable Thomas H. Kean:

We hereby submit our recommendations for procedural and administrative changes of the State's Hazardous Waste Cleanup program. These recommendations address various adverse findings reported in the May 5, 1982, Audit Report of the New Jersey Spill Compensation Fund, prepared by the Division of State Auditing and the Review and Analysis of Fiscal Policies and Managerial Operations prepared by the Program Integrity Section of the Division of Criminal Justice, Department of Law and Public Safety released concurrently with this report. These reports faulted the existing state contract with cleanup vendors, project oversight and existing organizational structure for spill fund accountability. This report recommends changes in the existing contract to eliminate the "time and materials" approach to cleanups, recommends staffing and procedural changes to improve project oversight, and recommends legislative changes to move the Spill Fund Administrator from the Department of Treasury to the Department of Environmental Protection so as to enhance fund accountability.

Respectfully submitted,



Kenneth R. Biederman
State Treasurer



Robert E. Hughey
Commissioner
Department of Environmental Protection

September 7, 1982

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

Since the passage of the Spill Compensation Act of 1976, the administration of cleanups has been beset by various problems. These problems have been caused by: the split in departmental responsibility between fund administration (Treasury) and cleanup operations (DEP); the difficulty of defining pre-act and post-act spills and identifying their perpetrators; the lack of comprehensive procedures; and the use of time and materials contracts. The problems were further compounded by the newness of the cleanup activity with only a few firms competing to do the work.

The future administration of spill cleanups will become even more complex as the new funding sources which have become available begin to be utilized. These include not only the Spill Compensation Fund but the federal Superfund, the Hazardous Waste Discharge Bond Fund, and the Landfill Closure and Contingency Fund. In addition, it is apparent that the cleanup of hazardous waste sites will not be a short-term project but, rather, may take as long as 30 years to complete.

Based upon the findings of the past and the anticipation of what lies ahead, the following major recommendations are made:

- . New comprehensive and detailed procedures, recently developed, should be accepted and implemented by all concerned parties involved in the cleanup effort. They should include not only clear definitions of responsibility but also the process by which to encumber and expend funds. These changes are detailed in the following text. Once adopted, training programs for staff and management in the use of the procedures should begin forthwith.
- . A new state contract should be finalized, bid, and awarded as soon as possible. The new contract should be applicable only in emergency situations, while any cleanups which are considered non-emergency should be addressed by separate site-specific/fixed cost bidding. It is further recommended that vendors be prequalified as a prerequisite to bidding. In addition to a new contract, a Treasury Procurement Circular should be issued which details the procedures involved in

bidding and awarding all future cleanup work. Sophisticated technical expertise for the review of all contract documents and contractor selections should be developed at once.

It is recommended that additional staff be added in the Department of Environmental Protection to carry out the most crucial aspect of financial management. As pointed out in the reviews of past cleanups, a major deficiency has been in the area of adequate staffing to carry out the important aspects of accounting and auditing. Additional contract review staff is also recommended for the Purchase Bureau in order to implement the new contracting approach.

Funds administration--one of the major lessons learned in the past has been the problem of split authority between the administration and the expenditure of funds in the cleanup process. In order to clarify these responsibilities, it is recommended that the Spill Fund, as well as the Administrator, be reassigned by a change in law to the Department of Environmental Protection, thus totally centralizing the responsibilities of fund administration and cleanup operations within that Department.

I. THE SPILL COMPENSATION AND CONTROL ACT OF 1976-AN
OVERVIEW

The Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.) was enacted as L. 1976, c. 141, approved on January 6, 1977 to become effective on April 1 of that year.¹

The general purposes of the act are to regulate the transfer and storage of petroleum products and other hazardous substances, to provide for removal of such substances when discharged into the environment and for the payment of damages sustained by third parties as a result of discharges, and to establish a fund consisting of receipts from a tax imposed upon transfers of hazardous substances as the first-line source of payment for the removal costs and damage claims. The act imposes a variety of responsibilities upon the Departments of Environmental Protection and Treasury.

The act prohibits the discharge of hazardous substances, defined to include specified categories of petroleum products and other substances enumerated by DEP regulations, excluding sewage and sewage sludge. The owner or operator of a major storage or transfer facility (as defined by the Act) is required to report to the DEP information concerning the nature and operation of the facility and measures in place for prevention of a discharge. The occurrence of any discharge must also be reported to DEP. Upon occurrence of a discharge, DEP may direct the discharger to arrange for cleanup or may undertake this effort itself and draw upon the statutory fund for the cost. As originally enacted, this provision applied only to actual discharges occurring after the effective date of the act. The second amendment of 1979 expanded the authority of DEP to deal with discharges which occurred prior to the effective date and to act in the case of an imminent peril of discharge, after notification to and approval of the Spill Fund Administrator to assure availability of funds.

¹ The Act has since been amended four times: L. 1979, c. 6, approved and effective January 18, 1979, L. 1979, c. 346, approved January 23, 1980 and effective April 1, 1980, L. 1980, c. 73, approved July 21, 1980, effective immediately and applicable to transfers after April 1, 1980; and L. 1981, c. 25, approved and effective February 9, 1981.

The Administrator is required to maintain separate accounts for receipts as between petroleum and all other sources. The petroleum account is available for costs of cleanup of other substances only upon specified conditions. A limitation of \$3 million for cleanup of pre-act discharges in any year is also imposed. A similar \$500,000 annual limitation applies to expenses undertaken to cure contamination of private residential wells by virtue of the 1981 amendment. Cleanup expenditures from the fund are made a priority claim upon the revenues and property of the discharger.

Claims payable from the fund, in addition to cleanup costs, include: repair or replacement of real or personal property damaged by a discharge, lost income, reduction in property value, restoration of natural resources, loss of tax revenue to State or local government, and interest on loans made from other sources for cleanup efforts. These costs are also recoverable by the fund from discharges without regard to fault, subject to specified limits. Where gross negligence, willful misconduct or willful violation of applicable construction or operating standards is shown, no limitations apply on recovery. Defenses to recovery by the fund are limited to conditions of war, sabotage, or act of God.

The tax levied upon hazardous substance transfers is administered by the Division of Taxation in accordance with the State Tax Uniform Procedure Law and the specific provisions of the act. Separate measures of taxation are specified for petroleum (1¢ per barrel) and other hazardous substances (.4% of market value). Substances containing precious metals, by virtue of the 1980 amendment, are taxed at the petroleum rate. These rates are to apply until the fund amounts to \$50 million. Other provisions, which have never become applicable, provide for a reduction of the maximum fund balance to \$36 million and for refund of certain taxes paid into the non-petroleum account. The 1979 amendment provides that in the event of a major discharge giving rise to claims exceeding the existing balance of the fund, the tax may be increased up to rates of 4¢ per barrel in the case of petroleum products (and those containing precious metals) or the greater of 4¢ per barrel or .8% of market value for non-petroleum substances. The increased rate may be less than the specified maximum if the administrator determines that revenues produced will be sufficient to pay outstanding reasonable claims within one year. Otherwise, the maximum rate is to apply until it produces revenue equal to 150% of pending claims deriving from either petroleum or non-petroleum discharges, as the case may be. The maximum tax rate for non-petroleum products was imposed in November of 1980 and continues to be in

effect. A similar provision also added in 1979 alternatively allows increasing the tax on non-petroleum products to 4¢ per barrel when the products contain precious metals and the greater of 4¢ per barrel or .6% of the market value for other products where non-petroleum claims exceed 70% of the fund balance and non-petroleum claims account for more than 70% of all claims, both paid and pending.

The statute establishes the New Jersey Spill Compensation Fund within the Department of the Treasury as a "non-lapsing revolving fund." The fund is to be credited with all taxes and penalties collected under the authority of the act. At the inception of the Act revenues generated amounted to \$6.5 million per year. The January 1980 amendments raised annual revenues to \$8.5 million. Currently revenues of \$13 million per year are being collected, the increase in part due to activation of the chemical accelerator tax on 11/1/80. Interest on the fund balance is to accrue to the fund. The fund is available to pay cleanup costs and third-party damage claims, as generally described above. It is also available for the administrative activities entailed in carrying out the provisions of the Act. Research and demonstration projects may be funded to the extent of interest earnings. Actual expenditures from the fund are made in accordance with authority contained in the annual appropriations acts consistent with these purposes. At present, the scope of eligible expenditures is further defined in a regulation adopted as N.J.A.C. 17:26-2.1. This regulation was adopted in February of this year and was designed to limit fund activities to those not pre-empted by the federal Superfund law. In material effect, the regulation requires that non-petroleum cleanup costs must first be charged against sums made available from Superfund upon application to the federal government before payments are allowed for this purpose from the Spill Fund.

The State Treasurer appoints and supervises the Fund Administrator, who is "the chief executive of the fund." The Administrator is responsible to determine the conditions which trigger adjustment in tax rates and to make all disbursements from the fund. He also examines and determines all third-party claims against the fund and oversees settlement and arbitration efforts involving third-party claimants and persons who dispute liability for discharges.

The statute also authorizes the Public Advocate to represent claimants against the fund who are affected as a class.

The Attorney General represents the fund and the officials of the Treasury and Environmental Protection Departments engaged in the administration of the statute in

any and all litigation which may arise. Matters in litigation may include unpaid taxes, recovery of cleanup costs, subrogation claims on third-party payments, disputes with cleanup contractors, assessment of penalties for non-compliance with the act's procedural requirements as well as defense of the statute and regulations adopted thereunder against claims of conflict with federal law (e.g., pre-emption by the Superfund law).

II. THE SPILL COMPENSATION AND CONTROL ACT OF 1976-HISTORY

The New Jersey Spill Compensation and Control Act of 1976 became effective in April of 1977. The original law was motivated by the prospect of off-shore drilling and a desire to protect the New Jersey shore resort industry against damages that could result from an off-shore accident. The Act provided for a maximum fund of \$25 million and it was expected that this balance would remain relatively constant pending a major discharge or series of discharges. For the first 15 months following enactment of the Act, cleanup expenditures amounted to only \$63,500 for the cleanup of 6 miscellaneous discharges.

In 1978, it became evident that the largest number of reported incidents involved chemicals and hazardous substances other than petroleum. The first major discharge occurred in June 1978 when the United Chemical storage plant in Jersey City caught fire resulting in a cleanup expense amounting to \$700,000. This was followed in January 1979 with a fire at the Arlington Warehouse chemical storage facility in Newark which resulted in a cleanup cost of \$1.2 million. Studies undertaken by DEP in 1978 revealed numerous hazardous substance discharge sites throughout the State which involved either illegal dumping or long-standing discharge conditions which endanger the State's potable water supply.

One of the sites identified was the Chemical Control Corporation in Elizabeth New Jersey which was a licensed treatment facility and was violating the terms of its license resulting in conditions of hazardous substance discharges and imminent peril for discharge due to a large buildup of hazardous substance inventory accumulating at the site. The State secured a court order and entered the site for purposes of cleanup which began in April 1979. The existing law allowed for a cleanup of only those hazardous substances which were actually discharging. At the time this represented about 25% of the total amount of waste on site.

In response to the limited application of the Spill Law to the Chemical Control situation, and in recognition of the numerous hazardous substance locations throughout the State, the Spill Fund legislation was amended in January 1980 to expand its scope of applicability. This expanded scope included circumstances which presented an imminent peril for discharge as well as existing discharges and to include a limited response to the cleanup of pre-act discharges. Pre-act discharges were interpreted as those that had commenced prior to the original effective date of the Act in

1977. The 1980 amendment recognized the increased hazardous substance exposure and increased the tax rate against the chemical industry and increased the maximum fund limit from \$25 million to \$50 million.

By this time, the Department of Environmental Protection had identified in excess of 300 potentially hazardous substance sites which needed investigation and possible cleanup by the Spill Fund in accordance with the increased scope of responsibility created by the January 1980 amendments. Adjustments to this increased scope of responsibility were still in the planning stages in April 1980 when a dramatic fire and explosion occurred at the Chemical Control site producing an immediate discharge of hazardous substances from approximately 45,000 55-gallon drums which were stored on the site. The resulting emergency response to this incident took priority over all other actions and ultimately produced a total cleanup cost for this one site of approximately \$25 million.

The Spill Compensation Act was further amended in February 1981 authorizing up to \$500,000 in payments per year to provide an alternate water supply to private wells which have been contaminated due to pre-act discharges. Responsibilities for cleanup increased even further in April 1981 with the enactment of Federal Superfund legislation wherein Spill Fund money may be used as State matching funds. It is estimated that this added source of funds will represent up to \$50 million per year for additional cleanups, when fully implemented.

In addition, the passage of the Hazardous Discharge Bond Fund Act, authorizes \$100 million for the identification, cleanup and removal of hazardous wastes.

The Sanitary Landfill Closure and Contingency Fund Act (P.L. 1981, c. 306) may also provide funds for the removal of sources of contamination in landfills. However, at this time its applicability to this type of action is in question. Thus the funds usage is now restricted to damage claims and landfill closure.

The impact of the increased statutory responsibilities of the Spill Fund was an actual cleanup expenditure for Fiscal Year 1981 of \$28 million and over 1,000 invoices --- 10 times greater than the previous Fiscal Year. During the same Fiscal Year, third party damage claims filed increased from a previous high of 39 to 459. At present, there are 263 open third party claims representing \$3.4 million compared to only 2 open claims representing \$43,000 in January 1980.

III. AVAILABILITY OF VARIOUS FUNDING SOURCES

While cleanups performed previous to this date have been primarily funded out of the Spill Compensation Act (apart from the reimbursements from the federal government which were secured out of the federal 311 fund - as contained in the Clean Water Act of 1977 - in the cases of the Chemical Control and Goose Farm cleanups), future cleanups will be carried out from a variety of funding sources. Primary among these are the following:

Spill Compensation Fund--The Spill Compensation Fund will continue to play a role in the funding of future cleanups. It should be emphasized that the fund carries a restriction of \$3 million per year for pre-act discharges, of which not more than \$1.5 million can be expended on any one spill. It is anticipated that in the coming years approximately \$10 million per year will be available from this funding source. The Spill Fund will also be used in concert with the Hazardous Discharge Bond Act, within limitations specified below, as well as the Federal Superfund.

Hazardous Discharge Bond Act--The Hazardous Discharge Bond Act (P.L. 1981, c. 275) authorizes the issuance of \$100 million in bonds for the identification, cleanup and removal of hazardous discharges. The first appropriation out of the Bond Fund provided \$10 million as the non-federal share for cleanups to be funded out of the Federal Superfund. In addition, it provides \$20 million for the cleanup of 26 sites for which funds are not anticipated to be available out of the Spill Compensation Fund or Federal Superfund. In addition, the appropriation provides \$3 million for emergency response. In each of the above cases, the appropriation requires the Spill Fund Administrator to certify that monies in the Spill Compensation Fund are insufficient to cover the costs before the appropriated funds can be utilized.

Superfund--The Comprehensive Environmental Response Compensation and Liability Act of 1980, better known as the Federal Superfund, is anticipated to provide New Jersey with additional funds for cleanup in the years ahead. The legislation authorizes \$1.6 billion over a five-year period. Different categories of cleanups are covered by the Superfund allocations. In emergency cases, the federal government will participate up to a level of 100 percent. However, caps are placed on the federal action in that site work will be terminated when

either the expenditure of funds reaches \$1 million or the time period of cleanup reaches six months, whichever of the two occurs first.

The second type of cleanup is that of remedial actions which are considered long-range in nature. In this instance, the federal government requires a minimum 10 percent match in kind or in cash by the State. However, the state must pay 50 percent in those cases where the facility is operated by the state. To secure the second type of funding, the following assurances must be given:

1. The federal government must be assured that the state will provide its 10 percent match;
2. They must be assured that removed waste will be disposed of at a proper hazardous waste facility; and
3. Assurances must be given that long-term maintenance will be provided at the cleanup site.

A recent example of the remedial approach is the the agreement between the State and the Atlantic City MUA for work at Prices Landfill. Under this agreement, \$302,150 was provided to the state from the Superfund with the state agreeing to provide a 10 percent out of the Spill Compensation Fund. In addition, an agreement was signed between the State and the Atlantic City MUA whereby the MUA agreed to assume the long-term maintenance of the project.

Sanitary Landfill Closure and Contingency Fund Act--
This act, which levies a 15-cent-per-cubic-yard tax on the disposal of solid waste is currently being examined as to whether cleanups will be allowable out of the fund established by the Act. The Act also mandates a 30¢/cu. yd. charge be paid into an escrow account by each landfill owner to assure proper closure where possible. It is clear from the legislation that the fund may be utilized to cover the cost of damages and claims as well as the closure of landfills. Coverage for removal of the source of the contamination in the landfills is in question.

IV. IMPLEMENTATION/PROBLEM AREAS

Audit Findings and Reactions: Since the implementation of the Act, there have been various audits performed. In April, 1979, DEP audited invoices from vendors on the Chemical Control project. Two months later, the audit was expanded to include purchases at Chemical Control. These two actions resulted in the audit of Earthline and Coastal Engineering.

Using DEP work papers, a follow-up audit was done by the Internal Audit Unit within the Department of Treasury. The Treasury audit was published on September 26, 1979. This audit focused primarily on problems with certain invoices and the need for better accounting controls and auditing. It also addressed the need for improved procedures. This action resulted in an improvement in communications between the Division of Hazard Management and the Spill Fund Administrator who reviewed jointly any invoice payment problems which surfaced. In addition, the audit resulted in the hiring of a full-time accountant to work at the Division of Hazard Management.

From mid 1980 to February 1981 two additional audits were initiated. The DEP's Division of Fiscal and Support Services partially completed one of these audits (Goose Farm) in April 1981 while Murray Dropkin and Company an independent accounting firm completed the second. Dropkin and Company had been retained by the Spill Fund Administrator to identify and resolve problems that might exist on billings presented to the Spill Fund Administrator on the Chemical Control project. Their reports were published in nine segments throughout the summer of 1980. It raised many questions regarding the methods of contractor payment and raised issues of related contractual interpretation.

With the publication of the Goose Farm audit in April of 1981, it became apparent that the time and materials contract being used for cleanup work was inadequate. At this point, discussions began on the development of a new contract. Draft DEP procedures were also developed as a result of this audit and forwarded to Treasury for review and approval.

In June of 1981, DEP's Division of Fiscal and Support Services initiated an audit of the O.H. Materials contract on the Chemical Control project. Although this audit was never officially completed because of the unavailability of certain records from the Company findings were published and circulated. A draft was released in February of 1982. As a result of this audit, comprehensive new procedures addressing the relationship and respective responsibilities of Treasury and DEP were circulated and subsequently approved by the

Treasurer and the Commissioner of DEP. Simultaneously, a draft of the new contract to replace the existing one (X83) was updated to address the contractual problems brought to light by this audit. The final draft, which addresses only emergency cleanups, has been prepared and it is hoped that the contract will be awarded by Mid-November.

In addition, a new concept of contracting has been recommended for non-emergency projects where all will be bid on a site-specific basis. Wherever possible, unit prices will be employed and where time and materials contracting is still necessary, firm fixed prices will be used. With regard to emergency work, a comprehensive system of internal controls has been established setting contract funding limits for various levels of DEP management.

The latest audit report of the New Jersey Spill Compensation Fund was released by the Office of Legislative Services, Division of State Auditing in April 1982. The report covered Fiscal Year 1981. Apart from its fiscal findings and recommendations, the audit noted weaknesses in internal control which it said should be addressed by management. Foremost among those weaknesses was the problem of decentralization of the Fund's administration. It also stressed the need to consider the use of an internal audit function.

Recent questions concerning the audit of expenditures from the Fund resulted in the retention of the firm of Coopers and Lybrand by the Department of Treasury to carry out a comprehensive review of Spill Fund expenditures for the period April, 1979, through February, 1982. The Coopers and Lybrand audit will differ from previous audits in the following ways:

- . This is the first time that the state has engaged an independent CPA firm to audit the entire Spill Fund. The period of the audit is April 1, 1979 through February 28, 1982. Even though the fund was actually established in 1977, the large expenditures did not occur until 1979.
- . Coopers and Lybrand will visit principle contract vendors and will review their books and records related to billings of Spill Fund projects to determine whether the charges to the state correlate with the vendors' records. This will include equipment and payroll charges, hourly rates by skill level, materials, manifest for off-site transportation of hazardous materials, etc.

The CPA firm will conduct an extensive review of internal controls and accounting procedures used by DEP and Treasury. They will submit as part of their final audit report a management letter outlining specific recommendations for changing present accounting and control practices. This will be necessary not only to improve the handling of the N.J. Spill Fund but to be in compliance with the Federal EPA and Superfund regulations.

Coopers and Lybrand will analyze payments to contract vendors to determine compliance with contract provisions. The review will be conducted at both the contractors' and state premises. This will also include subcontractor charges.

Even though the focus of the audit is financial and compliance, the specifications provide for the CPA firm to detect errors, irregularities, mismanagement, collusion, fraud, records falsification, etc., and to bring the matters to the immediate attention of the Office of the Attorney General.

In addition to the Treasury Department requesting the audit, the Division of Criminal Justice determined that it was necessary to engage a CPA firm to provide a comprehensive fiscal analysis of fund expenditures. This is necessary to assist this division on an on-going investigation.

Contracts: Many problems have been encountered as a result of the State's method of contract procurement. In 1977, an entirely new technology was being dealt with and very little was known about the cleanup of hazardous waste. There were very few contractors available in this field. In an effort to achieve the desired flexibility for emergency response, it was determined that the best method of procurement would be the issuance of a blanket term contract with a solicitation of bids to establish approved vendors. The contract specifications which were prepared created the adoption of a time and materials contract with an anticipated term of one year. The first contracts were awarded on February 1, 1978.

While this contract was not used extensively, it was recognized early in 1979 that the specifications of the X83 contract lacked clarity. This left too many situations to judgement and interpretation based on such issues as "industry standard" and "emergency circumstances". A revised contract was awarded on September 1, 1979. It constituted an attempt to clarify contract conditions and to solicit a

larger number of cleanup vendors. While the second contract was an improvement, it did not encourage performance standards and as the audit reviews show it still required policy interpretation. Major problem areas included:

- . Lack of distinction between emergency and non-emergency cleanups.
- . Utilization of the time and materials concept which results in higher cleanup costs.
- . Open-ended equipment rentals which resulted in rental costs exceeding purchase costs of equipment.
- . Lack of definition in such crucial areas as contractor overtime, administrative overhead and utilization and payment of per diems.

The above problems also led to the use of waivers for service not included in the term contract.

Contractual understandings have also presented problems in the State's relationship with the Federal government. The State received Federal funds on two major cleanups which were undertaken in 1980---Chemical Control Corporation and Goose Farm, Plumstead Township. These funds were granted by the Federal government based on verbal commitments without the benefit of any formal written agreement. The absence of a formal agreement has provided interpretive difficulties at both the State and federal levels. Since the State and the federal governments are presently negotiating many cleanup sites which will include Spill Fund and Federal Superfund money, it is clear what we must approach this new dimension of cleanup very carefully to assure the development of a sound set of principles and procedures committed to a clearly defined contractual relationship.

Recovery Actions: A major responsibility of the Spill Fund Administrator is that he proceed for collection of all monies expended from the Fund against responsible dischargers. There is presently pending \$37 million of potentially collectible assessments. All cleanup obligations and third party damage claims paid from the Fund are authorized only after it has been determined that a discharger is not ready and able to make payment directly. In many instances, the discharger is unknown or insolvent. However, there are a significant number of cleanup sites and third party damage claims where recovery is potentially feasible even if this is difficult legally.

Collection activities have been slow primarily because of the legal difficulties in identifying and proceeding

against responsible dischargers. The increase in cleanup payments from a total of \$6.6 million through June 1980 to \$37 million today demonstrates an increased obligation to investigate and identify alleged dischargers, arrange for title searches and appraisals, schedule settlement conferences and prepare and convene Boards of Arbitration. In addition, open third party damage claims have increased from 2 in January 1980 to 263 today, representing a face value of \$3.4 million. All of these claims require extensive investigation to verify eligibility, validity and amount, followed by settlement conferences and arbitration proceedings as required.

Twenty-eight cases, representing \$36 million in cleanup expenses, have been referred to the Attorney General for litigation. In addition, the Fund is presently the defendant in four significant litigations (2 on the subject of Superfund preemption and 2 demanding payment of approximately \$1.4 million for amounts withheld from OH Materials pending an audit of cleanups at the Chemical Control and Goose Farm sites). Each of these litigations requires extensive preparation for depositions, answers to interrogatories, engagement of expert witnesses, etc. As an example, a single Notice for Deposition received in the litigation by OH Materials requires the production of 18 distinctive categories of information which, if produced, would represent a complete detail of historical documentation for every single operation associated with the Spill Fund and DEP cleanup practices.

Split Responsibilities: While by law, the fiscal responsibility of the Spill Fund was vested in the Administrator, the day-to-day cleanup operations (dealing with cleanup contractors; on-site decisions; as well as receipt and processing of invoices) was placed essentially with the Division of Hazard Management in the Department of Environmental Protection. Under this decentralized relationship, fund authorizations, purchase orders, waivers, and certification of invoices, while being initiated by the Division of Hazard Management did not flow through the normal internal control points within the DEP. Thus the split responsibility led to weaknesses in internal auditing and accounting controls.

Lack of Defined Procedures: It became evident from the audits performed by the Division of Fiscal and Support Services, as well as the Internal Audit Unit of Treasury, that procedures needed to be formalized and more detailed. As pointed out, in early 1981, the Department of Environmental Protection drafted procedures which outlined the responsibilities governing requests for authorizations from the New Jersey Spill Compensation Fund. These

procedures have been revised over time (See Appendix A for latest revisions) and on March 1, 1982, comprehensive procedures were adopted and transmitted to the Treasury. The procedures were an attempt to solve some of the problems inherent in the split administration of the cleanup projects. Primary areas covered in the procedures are:

- . The process for authorizing work under the Spill Fund and bond fund under emergency and non-emergency conditions;
- . The procedure for processing and amending funding authorizations;
- . The method of processing payments to contractors as well as applying for federal reimbursements;
- . The routing of contracts and invoices through DEP's Division of Fiscal and Support for administrative and fiscal approval; and
- . The procedure for closing out a particular cleanup project.

Additionally, the procedures address the important items of internal control as they relate to both the retention and payment of contractors as well as the accounting and auditing of expended funds.

Lack of Staff: It has been noted that while the need to increase staff in such areas as emergency response and cleanup was identified and agreed upon as being necessary, there was not a complimentary build up of staff in the areas of accounting and auditing. Several of the audit reviews performed on cleanup projects have recommended the addition of accounting and auditing positions not only to track the expenditure of funds but also to provide essential interim and post-audits. The Department of Environmental Protection sought to solve some of these shortfalls in staffing by providing accounting and/or auditing positions on a part-time and, eventually, full-time basis to the Division of Hazard Management. Yet, these measures are not adequate in carrying out the essential responsibilities in the area of accountability. In order to close the gap in the staffing areas, both the Department of Environmental Protection and the Spill Fund Administrator have requested additional positions which are listed in Appendices B and C. It should be noted that the requests are in some cases duplicative. For example, in the case of requests for Auditor positions the Department of Environmental Protection has requested 7 positions at a cost of \$133,657 while the Spill Fund Administrator's Office has included a request for 5 Auditors at a cost of \$90,021. The recommendation to place all Spill Fund Administration responsibilities under DEP will negate these duplicative requests.

V. RECOMMENDATIONS FOR LEGISLATIVE AND ADMINISTRATIVE CHANGES

Contract--As indicated throughout this report, major deficiencies exist in the current state contract for administering spill cleanups. In order to eliminate these problems it is recommended that the new draft RFP, currently being reviewed, be approved, bid, and awarded as soon as possible. The major change included in the new contract should be the utilization of the document only in those cases which represent emergency cleanups.

Regarding work that is performed on non-emergency projects, it is recommended that all non-emergency projects be bid on a site specific/fixed cost basis with vendors being prequalified.

Administrative Options--Increased fund usage, diversity of funding sources, anticipated claims and counter claims, and the subsequent need for decision making and accountability increases the necessity for more efficient administration.

To address these issues the following administrative options were considered and it is recommended that option number two be adopted:

1. The first option provides that administrative responsibilities should be vested with the agency so designated by law. Under this alternative, it is envisioned that the Spill Fund Administrator would have the clear responsibility for those cleanups funded completely from the Spill Compensation Fund. Thus, while it would be the responsibility of the Department of Environmental Protection to carry out the day-to-day programmatic aspects of a cleanup, the financial responsibility would reside with the Administrator. In those cases where the cleanups are funded from either the Hazardous Discharge Bond Fund and/or the federal Superfund, DEP would be vested with total responsibility for the fiscal and programmatic aspects. In addition, where the Spill Fund is utilized as a match for federal dollars, it is proposed that the Spill Fund match be considered as a grant to the Department of Environmental Protection, in which case the department would be solely responsible for the expenditure of these funds.
2. A second option would be to amend the Spill Compensation law by placing the Fund, as well as

the Administrator, under the jurisdiction of the Department of Environmental Protection. The advantage of this approach would be to totally centralize all program responsibility.

3. A third option would be that of moving the total financial administration of funds under the jurisdiction of the Spill Fund Administrator. Efforts related to day-to-day cleanups would remain within DEP.
4. Under a fourth option, the total financial administration of funds would be shifted to the Department of Environmental Protection. The Spill Fund Administrator would retain only his responsibilities for claim settlement and fund recovery.

Procedures--Procedures such as those currently utilized by the Department of Environmental Protection should be reviewed, adopted, and implemented for all actions involving the administration of cleanup projects. The procedures should be comprehensive and detailed and should outline the responsibilities of all parties concerned.

Additional Staffing--It is recommended that the following additional staff be established within the Department of Environmental Protection to carry out the recommended changes:

As point out in the recent memorandum from Commissioner Hughey to Treasurer Biederman (see Appendix B) the department has requested approval to establish 11 professional and three clerical positions to carry out crucial responsibilities in the areas of accounting and auditing. The total staffing and support costs for these positions is estimated to be \$256,000 per year. The positions are being requested in order to carry out the accounting and auditing requirements incorporated into the department's Policy and Procedure 3.11 (Appendix A) which addresses the aspects of processing financial documents as they pertain to particular cleanups and funding sources.

Seven of the requested positions will provide an audit staff to carry out timely interim and final audits. These criteria will apply to Spill Fund as well as non-Spill Fund-financed projects. The auditor's functions will also include the on-site inspection of accounting records.

Within the Office of Special Funds Administration, four accountant positions are being requested in order to carry out is responsibilities under the current procedure. Major

responsibilities assigned to the accountants include the concept of implementing roving accountant teams which will review accounting practices at various ongoing job sites. Additional responsibilities include the preparation of weekly reconciliation reports of expenditures from the various fund sources used to finance cleanups. In addition, the accountants will be responsible for ensuring the quality of all invoices for submission of interim and final payments to contractors.

In addition, with the centralization of all Spill Fund responsibilities within the Department of Environmental Protection, appropriate positions currently located in the Spill Fund Administrator's Office in Treasury should be transferred with those responsibilities.

Attorney General's Office

It is recommended that the Attorney General's Office review its positions complement in order to identify a sufficient level of full-time support in such crucial areas as the promulgation of regulations and Administrative Orders, resolution of emerging legal issues, and legal work related to Spill Fund recoveries.

Purchase Bureau and Division of Waste Management

It is recommended that the Purchase Bureau and the Division of Waste Management determine the personnel needed to administer the new method of contract awards.

Legislative--In order to effectuate the transfer of all Spill Fund Administration responsibilities to the Department of Environmental Protection, applicable sections of the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.) should be amended.



DEPARTMENT OF ENVIRONMENTAL PROTECTION

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HAZARDOUS WASTE SITE CLEANUP ACTIVITIES	6/1/82	<i>[Signature]</i> Assistant Commissioner for Management and Budget

I. PURPOSE

To establish administrative policies and procedures as listed below under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (P.L. 96-510), commonly referred to as Superfund; the Spill Compensation and Control Act (58:10-23.11 et seq.); the 1981 Hazardous Discharge Bond Act; and the Sanitary Landfill Facility Closure and Contingency Fund Act (P.L. 1981, C. 306).

These procedures apply to all hazardous waste site cleanup activities regardless of which Division initiates the activities.

- A. Authorizing Work and Opening Spill Fund - Emergency Conditions.
- B. Authorizing Work and Opening Spill Fund - Non-Emergency Conditions.
- C. Authorizing Work and Encumbering Bond Funds.
- D. Amending Funding Authorizations.
- E. Processing Payments to Contractors.
- F. Processing Federal Reimbursements.
- G. Closing Out a Project.

II. AUTHORITY

N.J.S.A. Title 13
N.J.S.A. Title 58:10-23.11 et seq.
P.L. 1981, Chapter 275
P.L. 1981, Chapter 306
Procurement Circular No. 34, Department of the Treasury, dated 4/1/82

III. SUPERSEDES

Policy and Procedure No. 3.11 dated 3/1/82.

IV. DEFINITIONS

Emergency - shall mean a condition where there exists a substantial risk of imminent damage to public safety or imminent and severe damage to the environment.

Work Authorization - shall mean Form DWM-012E prepared by personnel representing the Division of Waste Management to authorize a contractor to proceed with cleanup or disposal of hazardous materials under emergency conditions.

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Funding Authorization - shall mean Form DWM-013 prepared by the Division of Waste Management's fiscal personnel to request authorization of monies from a specified source of funds.

Amendment - shall mean Form DWM-013A prepared by the Division of Waste Management's fiscal personnel to revise amounts estimated for a specific project.

Daily Work Report - shall mean Forms DWM-014A, B, C, prepared and certified daily by the On-Scene Coordinator, Division of Waste Management, to accurately record activities on site for that particular shift. These forms will itemize both personnel and material resources consumed at the site.

Weekly Work Order - shall mean Form DWM-015 prepared by the On-Scene Coordinator, Division of Waste Management, to authorize the contractor to provide specified amounts of labor, equipment, material, and other services on a weekly basis.

Waiver - shall mean a situation in which the bidding process is unacceptable for reasons stated in N.J.S.A. 52:34-9 and 52:34-10. Waivers must be submitted on Treasury Form PB-129 and be approved by the Treasurer, State of New Jersey.

Chief, Office of Special Funds Administration - shall mean the employee so designated within the Division of Fiscal and Support Services.

Project Accountant - shall mean an employee so designated and assigned to advise the On-Scene Coordinator, Division of Waste Management, and reporting to the Supervisor of Administration, Division of Waste Management.

Field Accountant - shall mean an employee so designated and assigned to the Office of Special Funds Administration for the purpose of monitoring on site compliance with DEP's policies and procedures on a periodic basis for all sites.

Supervising Accountant - shall mean an employee so designated and assigned to the Office of Special Funds Administration for the purpose of developing, implementing and monitoring accounting procedures and controls governing hazardous waste cleanups.

Evaluation Committee - a five member group consisting of two (2) representatives from DEP (one of which will be from the Division of Fiscal and Support Services and one from the Division of Waste Management), one (1) representative from the Purchase Bureau who will chair the committee, one (1) representative from the Office of Spill Compensation Fund and one (1) representative from a disinterested third party State agency.

V. RESPONSIBILITIES

Commissioner is responsible for:

- Reviewing and either approving or disapproving Funding Authorizations and Amendments for both emergency and non-emergency activities.
- Approving or disapproving Work Authorizations (DWM-012E), between \$50,000 and \$250,000, for emergency activities.

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V. RESPONSIBILITIES (continued)

- . Reviewing and either approving or disapproving cooperative agreements to authorize DEP's participation with the Environmental Protection Agency.

Assistant Commissioner, Environmental Management & Control, is responsible for:

- . Reviewing and recommending approval or disapproval of Funding Authorizations and Amendments for both emergency and non-emergency activities.
- . Reviewing and recommending approval or disapproval of federal cooperative agreements.

Chief Auditor, is responsible for:

- . On Spill Fund work, in cooperation with the Department of the Treasury's staff, conducting timely interim and final audits. Audits are mandatory on projects with costs exceeding \$500,000 and selective on projects below that amount.
- . On non-Spill Fund work, conducting interim and final audits. Audits are mandatory on all projects with costs exceeding \$500,000 and selective on projects below that amount.

Chief, Office of Special Funds Administration, is responsible for:

- . Reviewing and either approving or disapproving Funding Authorizations, and Amendments.
- . Calculating the amount to be retained on each invoice in accordance with the contract pending completion of each project.
- . Approving Form AR 50/54 by signing the invoice in the "Certification by Approval Officer" block (Form AR 50/54 is the State Invoice).
- . Ensuring accountability and availability of funds requested to be encumbered by both Funding Authorizations and Amendments.
- . Serving as DEP liaison to the Department of the Treasury on fiscal matters.
- . In conjunction with the Department of the Treasury, preparing a monthly statement of the financial condition of the New Jersey Spill Compensation Fund and reconciling variances.
- . Preparing separate statements of financial condition for the Hazardous Discharge Bond Act and applicable federal funds on a monthly basis.

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V. RESPONSIBILITIES (continued)

- Developing a tracking system to ensure that Funding Authorizations and Amendments are processed through the appropriate channels, based upon the specified sources of funds that will be used to fund the project.
- Ensuring that Funding Authorizations are in accordance with the provisions of the applicable Appropriations Act.
- Establishing adequate fiscal controls and accounting procedures and ensuring that financial records are available for audit at all times.
- Performing a quality review of all invoices to ensure accurate extensions of cost figures, contract compliance, waiver policy compliance and reasonableness of costs incurred.
- Performing weekly reconciliation of Spill Fund expenditures.
- Ensuring that purchase orders are posted as received.
- Establishing and maintaining auxiliary ledgers by project and by prime contractors for all funding sources.
- Updating status logs maintained for Funding Authorizations and Amendments.
- Maintaining records for specific projects to account for funds authorized, encumbered, and expended.
- On a case by case basis, establishing and implementing a procedure to ensure personnel accountability at the site, such as the utilization of a time clock to record actual hours worked.
- Preparing a statement regarding availability of funds for Spill Fund post-act discharges, which is to be certified to by the Administrator, Spill Compensation Fund.

Director, Division of Waste Management, is responsible for:

- Informing the Commissioner, Deputy Commissioner, or other DEP official of the current status of all projects to include phase of completion and total costs incurred based on information received from the Chief, Office of Special Funds Administration.
- Preparing and approving Funding Authorizations and Amendments prior to submission of these documents through the Assistant Commissioner of Environmental Management and Control, and the Chief, Office of Special Funds Administration to the Commissioner.
- Approving or disapproving Work Authorizations (DWM-012E), between \$25,000 and \$50,000, for emergency activities.
- In a timely manner, preparing Requests for Proposals (RFP) including a detailed scope of work to be performed for all non-emergency work.

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V. RESPONSIBILITIES (continued)

- Signing the division approval block on Form AR 50/54 (Invoice).
- Preparing purchase orders: Agency Application to Obligate Funds (PB 3/AR45-1).
- Preparing a "Weekly Invoice Report", from the Division of Waste Management logs on invoices received, submitted and not submitted to the Chief, Office of Special Funds Administration.
- Ensuring the assignment of a unique project activity for each cleanup activity.
- Acting as lead individual for DEP on matters relating to Superfund.
- Preparing and approving remedial and long term Spill Fund and Superfund applications.

Chief, Bureau of Emergency Response, Division of Waste Management, is responsible for:

- Approving or disapproving Work Authorizations (DWM-012E), between \$5,000 and \$25,000, concerning emergency spill response to ensure the accuracy of estimated costs negotiated with contract vendors.

On-Scene Coordinator, Division of Waste Management, is responsible for:

- Preparing the Work Authorization (DWM-012E) documents up to \$5,000 during an emergency condition based upon negotiations with contractors for specific projects.
- Certifying Form AR 50/54 by signing to indicate that articles were received and/or services were rendered in accordance with the contract, as noted on the invoice, in the "Certification by Receiving Agency" block.
- Implementing, at the direction of the Director, Division of Waste Management, procedures recommended by Chief, Office of Special Funds Administration, to ensure personnel accountability on each job.
- Preparing the Weekly Work Order (Form DWM-015) to be issued to the contractor.
- Completing, signing, and dating Daily Work Reports (Form DWM-014A, B, C,) in accordance with form instructions.
- Under emergency conditions, authorizing funding and selecting contractors in accordance with criteria outlined in Section VII A. of this procedure.
- Soliciting technical expertise from the Project Accountant and Field Accountant concerning the Daily Work Reports, Weekly Work Orders, and Contractor Invoices.

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V. RESPONSIBILITIES (continued)

- Ensuring that the contractor conforms with contract stipulations and, through the Bureau Chief, informing the Director, Division of Waste Management of any deviations.

VI. POLICY

A. Funding Authorizations and Amendments

Funding Authorizations, (Form DWM-013) are used to request an encumbrance of funds against a specified source of funds. Projects may be funded through the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Spill Compensation and Control Act, the Hazardous Discharge Bond Act, or through other bona fide sources.

Amendments (Form DWM-013A) are prepared to either increase or decrease the funds required from a specific source for a particular project. The Amendments are submitted through the same route for review and approval and fiscal processing, as the Funding Authorization to which the Amendments pertain. Each form will cite the Funding Authorization number that it pertains to for reference purposes.

B. Waivers

When engaging a contract vendor or non-contract vendor for non-contract services during emergency spill cleanup response, consideration should first be given to contract vendors. If possible, a vendor who has contract prices for the type of services required should be selected. When it is necessary to use a non-contract vendor, every attempt should be made to obtain the most effective price available to the State, considering the circumstances of the emergency situation.

Invoices which are passed through the Office of Special Funds Administration must contain all justification for the emergency use and waiver documentation relevant to the selection of the vendor for the services required.

A statement by the DEP on-scene coordinator is required to show what method was used to determine the reasonableness of the non-contract prices. This statement may show that 1) the contractors price compares favorably with prior quotations and contract prices for the same or similar services, or 2) the contractors price is based on an established catalog, published list or market price.

Note: Each invoice for non-contract services must have a written justification for engaging the vendor, and a statement indicating under which portion of the waiver (emergency or non-emergency) the charges apply. Non-contract (waiver) services must be billed by the contractor on a separate invoice from contract items.

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VI. POLICY (continued)

C. Laboratory Contracts

Laboratory analytical services must be purchased from contract vendors on a rotating basis. Prior to the selection of a contract vendor, the Director of Laboratory Services or his designate must be contacted for advice and approval.

D. Hazardous Waste Cleanup Contract

There are a limited number of firms presently involved in hazardous waste cleanup. In order to avoid conflicts of interest, it is the policy of the Department to stimulate competition and increase the number of available vendors for this service.

Cleanup contractors may not perform laboratory work which shall determine the amount of material to be removed, the amount of treatment required, or certifications that the final treated water or contaminated soil meets contract requirements. Cleanup contractors can do laboratory work for quality assurance and compatability. Vendors performing feasibility studies may not do design work on the same cleanup project.

VII. PROCEDURE

A. AUTHORIZING WORK AND OPENING SPILL FUND - EMERGENCY CONDITIONS

NOTE: This procedure pertains only to the initial emergency response. When threat to life and property is alleviated and/or time limitations specified in the existing contract are met, follow Procedure B - Authorizing Work and Opening Spill Fund - Non-Emergency Conditions. When the emergency has passed, the Director, Division of Waste Management, will review the status of the project and prepare a scope of work for the remaining non-emergency cleanup to be advertised for bids by the Purchase Bureau.

On-Scene Coordinator

1. Prepare Form DWM-012E (Work Authorization) based upon cost estimates negotiated with contract vendor. The authorization should be limited to \$5,000 except that the Bureau Chief may allow additional authorizations up to \$25,000 and the Director, Division of Waste Management may authorize up to \$50,000 where the situation requires this increase. Further expenditures, up to \$250,000, may be authorized with the prior approval of the Commissioner when emergency conditions warrant.
2. Forward completed contractor-approved Form DWM-012E to the Chief, Bureau of Emergency Response.

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VII. PROCEDURE (continued)

A. AUTHORIZING WORK AND OPENING SPILL FUND - EMERGENCY CONDITIONS (continued)

- | | | |
|---|-----|--|
| Chief, Bureau of Emergency Response | 3. | Review form DWM-012E to ensure completeness of the document and reliability of costs estimated based upon the scope of the work to be performed. |
| | 4. | Forward approved Form DWM-012E to Project Accountant. |
| Project Accountant | 5. | Prepare Form DWM-013 (Funding Authorization) based upon data contained in DWM-012E and prepare PB3/AR45-1. The DWM-013 must specify the source of funds. |
| | 6. | Annotate permanent log to record date that Forms DWM-013 and PB3/AR45-1, are prepared. |
| | 7. | Forward authorization package (Forms DWM-012E and DWM-013 and PB3/AR45-1) to the Director, Division of Waste Management. |
| Director, Division of Waste Management | 8. | Review and, if satisfactory, approve Forms DWM-012E and DWM-013 and forward to Chief, Office of Special Funds Administration. |
| Chief, Office of Special Funds Administration | 9. | Review authorization package for completeness and fiscal accuracy. Indicate fiscal approval and forward to Assistant Commissioner, Environmental Management and Control. |
| Assistant Commissioner, Env. Management & Control | 10. | Review and approve authorization package and forward to Commissioner. |
| Commissioner | 11. | Sign authorization package to indicate approval and forward to Chief, Office of Special Funds Administration. |
| Chief, Office of Special Funds Administration | 12. | Upon receipt of final approved package, forward to the Administrator, Spill Compensation Fund, Dept. of the Treasury. |
| | 13. | Upon return of approved package from Treasury, annotate appropriate logs to record dates of approval and amount. |
| | 14. | Distribute copies of DWM-012E as indicated on Form. |

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VII. PROCEDURE (continued)

A. AUTHORIZING WORK AND OPENING SPILL FUND - EMERGENCY CONDITIONS (continued)

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|--|--|
| Director, Division of Waste Management | 15. Forward approved copies of DWM-013 to the Director, Division of Waste Management and Project Accountant. |
| Director, Division of Waste Management | 16. Notify through the Bureau Chief, the On-Scene-Coordinator of final approval received from the Department of the Treasury Administrator, Spill Compensation Fund. |

B. AUTHORIZING WORK AND OPENING SPILL FUND - NON-EMERGENCY CONDITIONS

- | | |
|--|--|
| Director, Division of Waste Management | 1. Prepare a detailed scope of the work to be accomplished or attach previously prepared scope of work. |
| Director, Division of Waste Management | 2. Prepare and approve DWM-013 (Funding Authorization) and Forms PB6 and PB-3/AR45-1. The DWM-013 must specify the source of funds. |
| Assistant Commissioner, Environmental Management and Control | 3. Prepare letter of justification. Submit with DWM-013, PB-3/AR45-1 and PB-6 to the Assistant Commissioner, Environmental Management and Control. |
| Chief, Office of Special Funds Administration | 4. Review package and if approved, forward to Chief, Office of Special Funds Administration. |
| Chief, Office of Special Funds Administration | 5. Verify that funds are available as indicated on DWM-013 and that supporting documents are attached. If funds are available, indicate fiscal approval and forward package to the Commissioner through the Deputy Commissioner. |
| Commissioner | 6. Sign DWM-013 to indicate approval and forward package to Chief, Office of Special Funds Administration. |
| Chief, Office of Special Funds Administration | 7. Upon receipt of approved package, update status log, retain copy for file and forward package to Administrator, Spill Compensation Fund, Department of the Treasury. |

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VII. PROCEDURE (continued)

B. AUTHORIZING WORK AND OPENING SPILL FUND - NON-EMERGENCY CONDITIONS (continued)

- Administrator, Spill Compensation Fund
8. Review package
 - . If disapproved, return to Chief, Office of Special Funds Administration.
 - . If approved, submit to the Division of Purchase and Property for bid.

NOTE: The five-member Evaluation Committee will review proposals received and select the most responsive bidder based on price and other necessary considerations. The Division of Purchase and Property will award the contract.

- Chief, Office of Special Funds Administration
9. Sign Form DWM-013 and return to Chief, Office of Special Funds Administration.
 10. Annotate log to indicate date of approval and amount.
 11. Forward approved copy of DWM-013 to Director, Division of Waste Management.

C. AUTHORIZING WORK AND ENCUMBERING BOND FUNDS

NOTE: For emergency conditions follow Section VII, Procedure A, Steps 1 through 11. For non-emergency conditions refer to Section VII, Procedure B, Steps 1 through 6. Continue with steps below for both conditions.

- Director, Division of Waste Management
1. Verify, through the Chief, Office of Special Funds Administration, that funds are unavailable from the Spill Compensation Fund. This must be certified by the Administrator, Spill Compensation Fund.
 2. Attached Administrator's statement to DWM-012E for emergency work and DWM-013 for non-emergency work.
 3. Forward approved document package to Chief, Office of Special Funds Administration.
- Chief, Office of Special Funds Administration
4. Review Forms DWM-012E and DWM-013 and indicate fiscal approval by signing DWM-013.

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VII. PROCEDURE (continued)

C. AUTHORIZING WORK AND ENCUMBERING BOND FUNDS (continued)

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|--|---|
| Supervising Accountant,
Bureau of Fiscal and
Accounting Operations | 5. Forward approved Forms DWM-012E and DWM-013 to Supervising Accountant, Bureau of Fiscal and Accounting Operations. |
| Supervising Accountant,
Bureau of Fiscal and
Accounting Operations | 6. Review and, if satisfactory, approve encumbrance from the Hazardous Discharge Bond Act. |

D. AMENDING FUNDING AUTHORIZATIONS - EMERGENCY CONDITIONS

NOTE: For Non-Emergency Conditions, increases in scope may be requested if allowed by the contract. Begin at Step 6 below, eliminating any reference to DWM-012E.

- | | |
|----------------------|---|
| On-Scene Coordinator | 1. Prepare Form DWM-012E (Work Authorization) based upon cost estimates negotiated with contract vendor, and note that this document is an amendment in the top right corner. |
| On-Scene Coordinator | 2. Forward completed Form DWM-012E to Chief, Bureau of Emergency Response |
| Bureau Chief | 3. Review Form DWM-012E to ensure completeness and reliability of costs estimated based upon revised scope of work to be performed. |
| Bureau Chief | 4. Forward approved Form DWM-012E to Project Accountant. |
| Project Accountant | 5. Verify that document references an on-going project. |
| Project Accountant | 6. Prepare DWM-013A (Amendment) based upon data contained in the Form DWM-012E. |
| Project Accountant | 7. Prepare PB3/AR45/1 to increase the obligated funding. |
| Project Accountant | 8. Annotate applicable project log to record date that DWM-013A is prepared. |
| Project Accountant | 9. Forward Forms DWM-012E and DWM-013A to Supervisor, Administrative Unit. |

POLICY AND PROCEDURES

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		No.	3.11
SUBJECT	HAZARDOUS WASTE SITE CLEANUP ACTIVITIES	EFFECTIVE DATE	6/1/82
		Page	12 of 16

VII. PROCEDURE (continued)

D. AMENDING FUNDING AUTHORIZATIONS - EMERGENCY CONDITIONS (continued)

- | | |
|---|--|
| Supervisor, Administrative Unit, Division of Waste Management | 10. Review documents for completeness and fiscal accuracy. |
| Director, Division of Waste Management | 11. Forward approved package to Director, Division of Waste Management. |
| Chief, Office of Special Funds Administration | 12. Review each form to ensure that conditions set forth in the current contract are satisfied. Approve Form DWM-013A if satisfactory. |
| Assistant Commissioner, Env. Management & Control | 13. Notify Project Accountant to update project log to record the dates Form DWM-013A was approved and forwarded to Chief, Office of Special Funds Administration. |
| Commissioner | 14. Review Form DWM-013A and indicated fiscal approval by signing the document. |
| Chief, Office of Special Funds Administration | 15. Forward approved Form DWM-013A to the Assistant Commissioner, Environmental Management and Control. |
| | 16. Review and indicate approval by signing Form DWM-013A and forward to the Commissioner. |
| | 17. Approve or disapprove Form DWM-013A and transmit to Chief, Office of Special Funds Administration. |
| | 18. Route approved Forms DWM-013A through appropriate chain of command to be processed: |
| | a. For Spill Fund requests, forward to Administrator, Spill Compensation Fund. |
| | b. For Bond Fund requests, forward to Supervising Accountant, Bureau of Fiscal and Accounting Operations, Division of Fiscal and Support Services. |
| | c. Forward approved DWM-013A to Director, Division of Waste Management. |

POLICY AND PROCEDURES

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		No.	3.11
BJECT	HAZARDOUS WASTE SITE CLEANUP ACTIVITIES	EFFECTIVE DATE	6/1/82
		Page	13 of 16

VII. PROCEDURE (continued)

D. AMENDING FUNDING AUTHORIZATIONS - EMERGENCY CONDITIONS (continued)

Director, Division of
Waste Management

19. Upon receipt of DWM-013A, advise Project Accountant to annotate project log to record date of approval by the Administrator and fiscal effect of Form DWM-013A.
20. Forward copies of approved DWM-013A to the On-Scene Coordinator, Bureau Chief, Project Accountant, and the Contractor.

E. PROCESSING PAYMENTS TO CONTRACTORS

Contractor

1. Prepare invoice for services rendered on Form AR 50/54.
2. Submit Form AR 50/54 and supporting documentation to the On-Scene Coordinator. Documentation shall include the following.
 - . Schedule of labor use including name and social security number of each laborer, job classification and time periods worked on the job.
 - . Equipment use schedule itemizing type of equipment, time in actual use, and standby time.
 - . Schedule of subcontractors to include the time period the subcontractor was employed and copy of the subcontractor's invoice.
 - . Schedule of material used to include amount of material and references to contract price list or copy of vendor invoices.

POLICY AND PROCEDURES

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		No.
		3.11
SUBJECT	EFFECTIVE DATE	Page of
HAZARDOUS WASTE SITE CLEANUP ACTIVITIES	6/1/82	14 16

VII. PROCEDURE (continued)

E. PROCESSING PAYMENTS TO CONTRACTORS (continued)

On-Scene Coordinator
 (NOTE: On Spill Fund work this task is carried out in conjunction with the representative of the Spill Fund Administrator.)

3. Verify the accuracy of the Contractor's invoice by comparing the contractor's invoice and supporting documents to Forms DWM-014A, DWM-014B, and DWM-014C (Daily Work Report and Form DWM-015 (Weekly Work Order) prepared and maintained by the On-Scene Coordinator. The DWM-014A shall be based on time records such as time clocks or logs, and on-site observations.
4. Review Form AR 50/54 and supporting documentation for technical accuracy and contract terms in accordance with the existing state contract.

NOTE: Any questions regarding the validity of expenses reported by the contractor will be resolved through consultation with the Field Accountant requested from the Chief, Office of Special Funds Administration.

Project Accountant

5. Certify Form AR 50/54 to verify accuracy of project technical terms and consistency with the work authorization and forward to Project Accountant.
6. Validate that payee information on Form AR 50/54 corresponds to Department of the Treasury's vendor file and forward to Director, Division of Waste Management.

Supervising Accountant,
 Office of Special
 Funds Administration

7. Send AR 50/54 to Chief, Office of Special Funds Administration.
8. Review Form AR 50/54 and all supporting documentation to insure that all costs are properly documented and in compliance with existing state contract. If correct, calculate retainage equal to 15% of amount billed and approve invoice for payment by affixing signature to the "Certification by Approval Officer" section of the form.

POLICY AND PROCEDURES

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Page	15 of 16

SUBJECT	EFFECTIVE DATE
HAZARDOUS WASTE SITE CLEANUP ACTIVITIES	6/1/82

VII. PROCEDURE (continued)

E. PROCESSING PAYMENTS TO CONTRACTORS (continued)

- Director, Division of
Waste Management
- Supervising Accountant
9. Send AR 50/54 to Director, Division of Waste Management.
 10. Review and approve Form AR 50/54 for payment by affixing signature to indicated that invoice is correct.
 11. Transmit Form AR 50/54 to Supervising Accountant, Office of Special Funds Administration.
 12. Assign invoice document number from batch of preassigned numbers issued by Treasury.
 13. Forward approved invoice for payment through applicable chain of command. Refer to DEP procedure 3.17.
 14. Update project log.

F. PROCESSING FEDERAL REIMBURSEMENTS

- Project Accountant
- Grants Manager
1. Prepare a monthly statement showing costs incurred for all charges against each approved federal project.
 2. Forward to DEP Grants Manager.
 3. File for federal reimbursements.

G. CLOSING OUT A PROJECT

- Project Accountant
- Chief, Office of Special
Funds Administration
1. Review status of all projects and notify Chief, Office of Special Funds Administration, of estimated completion dates.
 2. Determine amount of retainage for completed project.
 3. Make written request for close-out audit within sixty (60) days of project completion through the Bureau of Auditing.
 4. After audit is concluded pay contractor retainage if there are no audit exceptions.

POLICY AND PROCEDURES

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		No.	3.11
SUBJECT	HAZARDOUS WASTE SITE CLEANUP ACTIVITIES	EFFECTIVE DATE	6/1/82
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VII. PROCEDURE (continued)

G. CLOSING OUT A PROJECT (continued)

5. When audit exceptions are resolved, issue applicable payments and cancel unexpended balances.
6. Inform the Project Accountant, Division of Waste Management, that audit is finalized and project is formally closed.

Project Accountant
7. Issue a PB9 cancellation of Purchase Order (PB3/AR45-1) for completed project and forward with Form DWM-013A (to reduce funding to the amount expended) to Chief, Office of Special Funds Administration.

Chief, Office of Special Funds Administration
8. Update project accounting records and verify that cancellations reflect the proper funding sources.

MEMORANDUM

TO: Kenneth Biederman, Treasurer
State of New Jersey

FROM: Commissioner Robert E. Hughey

SUBJECT: DEP Personnel Needs Required for Hazardous
Waste Cleanups

I am hereby transmitting for your review and approval staffing needs for the Bureau of Auditing and the Office of Special Funds Administration in order to carry out their respective functions as related to cleanup projects.

In the case of the Bureau of Auditing, the additional positions are requested to meet the auditing requirements incorporated into our Policy and Procedure # 3.11 which addresses the procedures to be utilized in cleanups. Specifically the Chief Auditor is required to audit all Spill Fund projects exceeding \$500,000 and selective projects below that amount. On Non-Spill Fund financed projects, the Audit Bureau again is required to conduct interim and final audits on those projects exceeding \$500,000 and selective audits on projects below that amount.

In general the audit functions will also include field inspections of on-site accounting records as well as reviews of source documentation provided by contractors and sub-contractors to ensure contract compliance.

I am also requesting approval of four (4) positions (see attached listing) for the Office of Special Funds Administration. The accountants requested will carry out the responsibilities of that office as specified in Procedure # 3.11. Major responsibilities assigned to the accountants include:

Treasurer Biederman
Page 2

- . Implementing the roving accountant concept at on-going job sites in order to reconcile any existing contract interpretations of the On-Scene Coordinator.
- . Ensuring the accuracy of billings by contractors/sub-contractors.
- . Preparation of weekly reconciliation of expenditures from special funds and/or bond funds.
- . Maintenance of all ledgers as well as ensuring the quality of all invoices for submission at final payment.

Based on the above, I respectfully request that you approve the establishment of these positions in order that we may carry out our fiscal responsibilities with respect to present and future cleanup projects.

*Original Signed by
Robert E. Hughey*

Robert E. Hughey
Commissioner

Attachment

OFFICE OF SPECIAL FUNDS ADMINISTRATIONStaffing needs for cleanup projects

2 Accountant I @ \$19,766	\$39,532
2 Accountant II @ \$17,074	34,148
1 Senior Clerk Typist	<u>9,056</u>
TOTAL	<u>\$82,736</u>

April 29, 1982

BUREAU OF AUDITINGSalary Costs

(1) Supervising Auditor @ \$22,882	\$ 22,882	
(2) Auditor I @ \$20,754	41,508	
(3) Auditor II @ \$17,927	53,781	
(1) Auditor III @ \$15,486	15,486	
(1) Principal Clerk Steno @ \$11,555	11,555	
(1) Senior Clerk Steno @ \$9,509	<u>9,509</u>	
	<u>\$ 154,721</u>	\$ 154,721
Supplies & Materials		3,000
Travel		10,000
Additions & Improvements		<u>6,000</u>
TOTAL		<u>\$ 173,721</u>

* New Position

BUREAU OF AUDITING

CHIEF AUDITOR (A-30)

PRINCIPAL CLERK - STENO (A-13)

DEP GENERAL AUDIT

HAZARD MANAGEMENT AUDIT

CLERICAL STAFF
SUPPORT

PRINCIPAL CLERK - STENO (A-13) *

SUPERVISING AUDITOR (A-27)

SUPERVISING AUDITOR (A-27) *

SENIOR CLERK - STENO (A - 9) *

INTERNAL

EXTERNAL

AUDITOR I (A-25)

AUDITOR I (A-25)

AUDITOR I
(A-25)
(Existing)

AUDITOR I
(A-25) *

AUDITOR I
(A-25) *

AUDITOR II
(A-22) *

AUDITOR II
(A-22) *

AUDITOR II
(A-22) *

AUDITOR III
(A-19) *

AUDITOR II
(A-22)

HOURLY

AUDITOR II
(A-22)

ACCOUNTING
ASSISTANT
(A-13)

MEMORANDUM

TO Robert E. Hunt, Administrator
NJ Spill Compensation Fund

Trenton
Newark

FROM LeRoy Sylvester, Assistant
NJ Spill Compensation Fund *LMS*

SUBJECT Additional Staff & Recommendations

Date May 26, 1982

Attached is a recommendation and organizational chart for increasing the staff level of the Spill Compensation Fund from its present budgeted level of 8 to 23, an increase of 15 personnel.

Incorporated within this increase are the audit section and an increased accounting section recommended on the Internal Audit Unit's report of the Financial Condition of the Spill Compensation Fund for the year ending June 1981. The need for a Claims Section for recoveries and damage claim settlement is amply justified based upon both current and anticipated workloads in this area.

The proposed organization is designed lean for rapid flexible response to the existing and anticipated workload and issues and situations which can confront the Spill Compensation Fund.

LMS:r

NEW JERSEY SPILL COMPENSATION FUNDADDITIONAL STAFFING RECOMMENDATIONS

I. Background - The impact of current events on the duties and responsibilities of the Spill Compensation Fund Administrator

The responsibility of the New Jersey Spill Compensation Fund Administrator is the total financial management and accountability for all expenses, income, and claims which directly or indirectly involve the Fund. This responsibility and its ensuing duties can be operationally divided into four interrelated but distinct functional areas:

- Claims settlement with by parties who have suffered damage to real and personal property, loss of income, etc. or cleanup and removal expenses as a result of an independent discharger.
- Cleanup and removal expenses incurred by the Department of Environmental protection or by others under their direction.
- Recovery of monies expended for cleanup, removal, or payment of claimants.
- Monitoring available funds for claims, cleanup, removal, and tax purposes.

While the aforesaid functions are seemingly straight-forward, events that have occurred within the last two years have increased the complications and complexities of the duties involved within these functions. Events such as:

- The identification by the Department of Environmental Protection of over 400 priority sites for hazardous waste cleanup which will cost in excess of several billion dollars to cleanup and take an estimated 30 years to accomplish. Estimates have been made that it would require over \$50 million per year from all available sources to accomplish this cleanup within 30 years. At an average invoice value of \$50,000, this translates into auditing and accounting for a minimum 1,000 invoices per year. At an average processing time, without any audit problems, of two hours per invoice, this translates into 2,000 man hours per year. Add to this the accounting time for State personnel costs, equipment inventory utilization, and site audits totalling approximately 80 manhours per site, there is an additional 800 manhours per year. Therefore, this event has added approximately 2,800 man-hours to the Spill Compensation Fund.

- The Legislative addition of PreAct discharges and imminent Hazard under the Act has increased the cleanup and removal case load by approximately 12 cases per year. At an average cost of \$250,000, this becomes \$3,000,000 per year. The average invoice for these cases is approximately \$20,000 which at two manhours to audit and account, produces 300 manhours per year. Additional accounting time for "total cost" to the State will add 20 manhours per site or 200 manhours per year. Therefore, this event has added 540 manhours per year to the Spill Compensation Fund.

- The increased volume of emergency response by the Department of Environmental Protection, averaging over 400 per month, has increased the case load by approximately 30 cases per year. Using analysis similar to the foregoing events, this has added approximately 600 manhours per year.

- Recovery of monies expended for cleanup and removal, in addition to Title Searches and lien filing, average, for the simplest case, eight manhours for correspondence, photocopy work and processing the recovery check. Due to the publicity of Chemical Control, and other events, there is now the addition of a settlement conference being requested by the party liable. Preparation for and conducting the conference utilizes 30 manhours per conference. With an estimated addition of 35 cases per year in the recovery process, prior to litigation, this is a 1,050 manhour addition. More complex cases require additional time - up to 80 manhours per case prior to litigation.

- With the publicity surrounding the Spill Fund, more recovery cases are requiring litigation because of denials of liability on technical legal grounds. Approximately 20 additional cases per year will be referred to litigation. Once a case enters litigation, there is a large increase in demand on Spill Compensation Fund personnel's time for responses in the discovery process, coordinating information with DEP personnel, responding to interrogatories, researching documents for depositions, etc. Each case can require over 80 manhours of time for information development. Therefore, a 20-case increase translates into a minimum increase of 1,600 manhours per year.

- The Legislative inclusion of claimant reimbursement for the replacement of contaminated wells and increased public awareness of the financial resources available from the Spill Fund to reimburse parties damaged by a discharge has radically increased the number of claims to the Spill Fund. The average time to process a simple claim, with an unknown discharge from receipt to payment or denial is approximately 15 manhours. For claims

with known dischargers, where settlement conferences are required, take an approximate 45 manhours to complete. When arbitration is required, this adds approximately an additional 30 manhours involved in preparation of legal documents, the case, aligning witnesses, etc. A complex loss of income arbitration requires at least 48 manhours which has been expended to date on one present case with arbitration scheduled for June 22. Based on 459 claim cases per year to be resolved from basic unknown discharger cases to complex known discharger cases, it is estimated that the average case will require 32 manhours to investigate, and settle. Therefore, there is an estimated workload of 14,688 manhours.

- Administratively, the increased workload has produced a defined need for regulations, policies and procedures both intra and inter-departmentally. These are presently being developed, and it is anticipated that it will take Spill Fund personnel approximately 2,250 manhours to develop and coordinate policies and procedures with the other divisions and departments within the State. In addition, regulations are presently being developed for claims filing which will require another 220 manhours to complete.

- Overall, there are many issues to address regarding audit trails, fund obligations, inter-departmental and inter-division responsibilities, and funding, source of fund coordination and accounting, "total cleanup site costs, contract documents, DEP personnel financing from Fund, investigation procedures, etc. These assorted issues will require approximately 800 manhours to resolve.

II. Summary of Increased Spill Compensation Fund Workload

The foregoing events are imposing an increased annual workload upon the presently budgeted nine Spill Fund personnel over current estimates and is summarized as follows:

<u>Event</u>	<u>Manhours</u>
Scheduled Priority Site Cleanups	
1,000 Invoices x 2 manhours	= 2,000
40 Sites x 20 manhours	= 800
PreAct Discharges	
150 Invoices x 2 manhours	= 300
12 Sites x 20 manhours	= 240
Emergency Response Increase	
30 cases x 20 manhours	= 600
Recovery prior to Litigation	
35 cases x 30 manhours	= 1,050

(Cont'd.)	<u>Event</u>		<u>Manhours</u>
Litigation Support	20 cases	x 80 manhours	= 1,600
Claim Service	459 cases	x 32 manhours	= 14,668
Development of Policy & Procedure			= 2,250
Development of Regulations & Issue Resolution			= 1,020
	Sub Total		24,528
Administrative overhead 20%			<u>4,905</u>
	Total		29,433
29,433	÷ 1,680 manhours/year/person	=	17.52
			Personnel Increase

III. Spill Fund Organizational Chart

The attached Organizational Chart for the Spill Compensation Fund denotes the personnel and staff required to implement and directly manage the Spill Compensation Fund.

IV Explanation of the Organizational Chart

The organizational chart shows requested increase in staff, of 14 people to that budgeted, yet an analysis of responsibilities, duties, and issues by areas of responsibility will show the actual need for staffing of this magnitude.

A. Assistant Chief New Jersey Spill Compensation Fund. Under the direction of the Administrator of the New Jersey Spill Compensation Fund, the Assistant Bureau Chief will manage the overall organization, interface with the various departments and divisions within the State and act on behalf of the Administrator where deemed necessary. The Assistant Bureau Chief will implement the Administrator's decisions throughout the organization and will advise the Administrator on policy, personnel, and issues evolving with the Spill Compensation Fund and the various departments and divisions within State government.

B. Executive Assistant This is an established position which coordinates office activities and activities with other departments and divisions within the State government. The primary function of the Executive Assistant will be in the implementation of existing procedures and new policy development.

C. Auditing and Accounting

The Act provides the Department of Environmental Protection with the responsibility to effect cleanup and removals and to draw upon available monies from the Fund to pay for this. The Administrator has retained the authority as approval officer for the payment of invoices. Therefore, per sound accounting practice, the audit function should be integrated within the Spill Compensation Fund and segregated from the contracting function of the Department of Environmental Protection.

Because of the many issues generated regarding the audit and accounting function, and the overall increase in cleanup funds expended from approximately \$500,000 per year, since 1980, to an average of \$8 million per year and an estimated expenditure of \$10-\$12 million for this calendar year, the audit and accounting functions need to be expanded.

A Supervising Auditor will be responsible for the establishment of auditing and accounting procedures and the integration of these procedures with the various departments and divisions within the State and with vendors hired by the State. The Supervising Auditor will be responsible for both the audit and accounting functions of the section.

In the audit function, auditors will be needed to conduct field audits on cleanup sites, at vendors and on damage claims submitted to the Fund. To schedule manpower, workloads, develop in-house procedures and perform complex audits, an Auditor I is required.

At present, there are currently 28 cleanup sites with work in various stages of progress and estimated costs varying from \$25,000 to \$1,100,000. Within the next 12 - 24 months, there are approximately \$12 million not including sites currently being cleaned up and the damage claims that have been filed. This is a significant audit and accounting workload to which must be added the accounting of alternate revenue sources such as violations, federal reimbursement by 311K, integration of funds with alternate fund sources such as Superfund and Bond Fund. In addition, accounting for "all cleanup and removal acts" incurred by the State, for the administrative budgets provided to the Division of Waste Management in the Department of Environmental Protection and the Attorney General's office on a discharge specific basis is providing an increase in complexity.

Due to the increased volume and complexity, it is recommended that the accounting staff be expanded from one Accountant II to a staff of four accountants.

An Accountant I will work under the supervision of the Supervising Auditor to establish procedures and integration of the procedures with those of other departments and divisions within the State and within the Fund. The accountant will supervise the subordinate accountants, prepare reports and accounts as needed.

The operating accountants will maintain the accounts and correlate their accounts for audit and review.

D. Claims - Recoveries

Because of the close inter-relationship and procedural methods, the claims group will also be responsible for recoveries from monies expended for cleanup and removal. This group is the most important group within the Spill Compensation Fund since the Act provides for a method of reimbursement to claimants who have been damaged by an independent discharger and whose claims should be handled as expediently as possible.

Within the past year, there has been a rapid expansion in claims due to the increased awareness of a funding source available to redress damages incurred by private citizens, municipalities, fire companies, and other groups due to a discharge.

Recoveries of Spill Fund monies expended also require an attempt to obtain reimbursement from the discharger or party liable prior to seeking recovery in the Superior Court of New Jersey.

A Claims Supervisor is needed to manage the claims and prepare cases for settlement conferences, arbitrations, and to coordinate the activities of the Claims Section with the Deputy Attorney Generals assigned to the Spill Fund and the Department of Environmental Protection personnel assigned to the discharge investigation.

Claims Investigators are required to review cases for missing data and do the field work necessary to acquire the data whether from the Department of Environmental Protection, cleanup site, claimants, vendors, etc. They will have title searches performed, liens filed by the DAG's and act as liaisons with the DAG's, DEP, etc. on specifically assigned cases.

Since there are complex legal issues involved and the preparation of various legal documents required, a legal secretary has been requested for this section because of the required knowledge in this area.

E. Administrative Analyst

The Administrative Analyst is required to write the procedures developed by the various personnel within the Fund, the regulations promulgated by the Administrator and to coordinate this with the other divisions and departments within the State. In addition, the analyst is needed to

provide ongoing monitoring and initiate changes as required to existing procedures, coordinate legislative needs on behalf of the Spill Fund, and to analyze other changes occurring in the various laws.

F. Clerical Section

The clerical section has been sized based upon one clerk per three people requiring clerical assistance.

Emphasis has been placed upon a Principal File Clerk since the files maintained in the Spill Compensation Fund offices will be the primary legal files and there are various personnel who will be reviewing the file. File control will be a critical function.

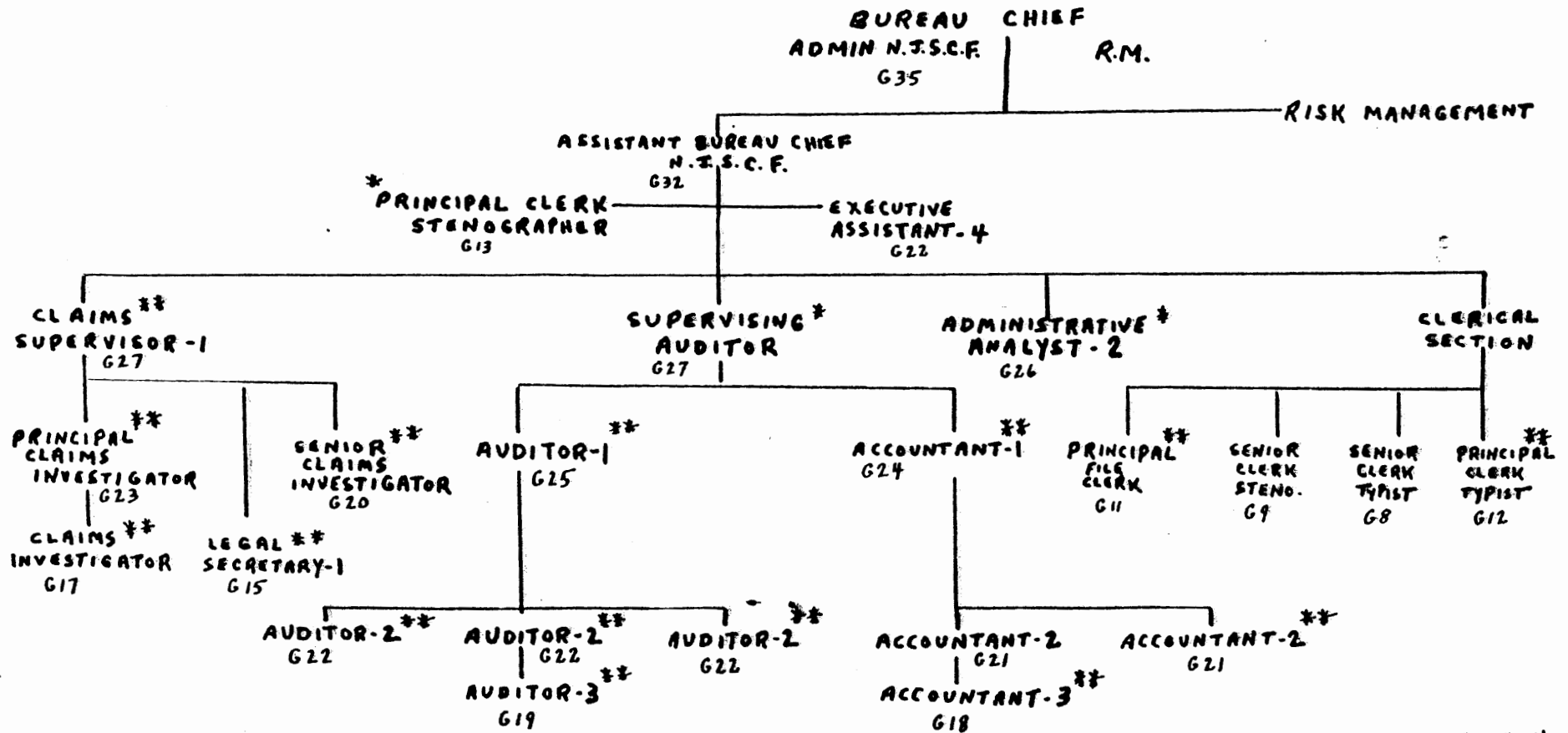
SALARY & WAGE DETAIL

	<u>No. Personnel</u>	<u>Current</u>	<u>Approved '83 Budget</u>
Current Positions.....	4	60,434	
Approved '83 Budget Positions....	8		149,316
 <u>New Proposed Positions</u>			
Claims Supervisor I.....	1		22,882
Principal Claims Investigator....	1		18,824
Senior Claims Investigator.....	1		16,260
Claims Investigator.....	1		14,045
Auditor I.....	1		20,754
Auditor II.....	3		53,781
Auditor III.....	1		15,486
Accountant I.....	1		19,766
Accountant II.....	1		17,073
Accountant III.....	1		14,748
Legal Secretary I.....	1		12,740
Principal Clerk Typist.....	1		11,007
Principal File Clerk.....	1		10,484
		Current.....4.....60,434	
		Approved	
<u>TOTAL:</u>		'83 Budget.....8.....	149,316
		Additional	
		Staffing.....+15.....	247,850

ADDITIONAL STAFFING AND SUPPORT DETAILS

	<u>No. Personnel</u>	<u>Approved '83 Budget</u>	<u>Additional Staffing</u>	<u>Total</u>
Salaries & Wages.....8.....		149,316.....		149,316
+15.....			247,850.....	247,850
Administrative Expenses.....		43,500.....	15,476.....	58,976
Special Service Account.....		7,000.....	(0).....	(7,000)
Professional Services.....		220,000.....	-.....	220,000
Services Performed by Other Agencies.....		125,170.....		125,170
Equipment.....		5,400.....	37,300.....	42,700
		<u>543,386</u>	<u>293,626</u>	<u>837,012</u>

SPILL COMPENSATION FUND ORGANIZATIONAL CHART



PRESENT STAFFED POSITION
* '83 BUDGET POSITION
** PROPOSED POSITION

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